

1 UNITED STATES DISTRICT COURT  
 2 EASTERN DISTRICT OF NORTH CAROLINA  
 3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 5:22-hc-2006-FL  
 5 Plaintiff, - New Bern, North Carolina  
 6 v. - December 20, 2022  
 7 TODD MICHAEL GIFFEN, - Competency Hearing  
 8 Defendant. -  
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9  
 10 TRANSCRIPT OF COMPETENCY HEARING  
 11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN  
 12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

14 For the Plaintiffs: United States Attorneys' Office  
 15 By: Genna D. Petre  
 16 150 Fayetteville Street, Suite 2100  
 17 Raleigh, NC 27601  
 18 (919) 856-4500

19 For the Defendant: Federal Public Defender  
 20 By: Joseph H. Craven  
 21 150 Fayetteville St., Suite 450  
 22 Raleigh, NC 27611-5967  
 23 (919) 856-4236

24 Court Reporter: Tracy L. McGurk, RMR, CRR  
 25 413 Middle St.  
 New Bern, NC 28560  
 (419) 392-6626

Proceedings recorded by mechanical stenography,  
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## I N D E X

Examinations Page

BRIANNA GROVER, Ph.D., DIRECT EXAMINATION 7

BY MS. PETRE:

BRIANNA GROVER, Ph.D., CROSS-EXAMINATION 34

BY MR. CRAVEN:

## E X H I B I T S

No. Description Page

Whereupon Exhibits at Docket Entries 3, 8, 6  
 17, and 25 are admitted into evidence

- - -

1 (Commenced at 10:01 a.m.)

2 THE COURT: Good morning.

00:00:03 3 MS. PETRE: Good morning, Your Honor.

00:00:05 4 THE COURT: I call the case of United States

00:00:09 5 of America versus Todd Giffen. And the matter comes

00:00:12 6 before this Court for determination of whether Mr.

00:00:17 7 Giffen meets criteria for civil commitment under 18,

00:00:25 8 United States Code, Section 4246. Before I go any

00:00:27 9 further, I'd like to confirm that those participating by

00:00:32 10 video, which include Mr. Craven -- good morning, Mr.

00:00:37 11 Craven -- and Petitioner's expert and, of course, Mr.

00:00:42 12 Giffen, that you can all hear me.

00:00:46 13 Mr. Craven, is the audio working well?

00:00:50 14 MR. CRAVEN: It is, Your Honor. And we can

00:00:52 15 also see the courtroom there in New Bern. And we are

00:00:56 16 otherwise ready to proceed. Thank you very much.

00:00:58 17 THE COURT: Okay. Very good.

00:01:01 18 And Ms. Petre is here, of course.

00:01:04 19 MS. PETRE: Good morning, Your Honor.

00:01:05 20 THE COURT: Good morning.

00:01:11 21 Would anyone like to make an opening

00:01:16 22 statement?

00:01:16 23 I'll start with the government. Would you?

00:01:18 24 MS. PETRE: No, Your Honor, the government

00:01:19 25 would not like to make an opening statement, but I do

00:01:23 1 have several stipulations I'd like to offer to the Court  
00:01:26 2 at the appropriate time.

00:01:27 3 THE COURT: I welcome hearing what they are.

00:01:28 4 MS. PETRE: This morning the United States  
00:01:30 5 will call the expert testimony of Dr. Brianna Grover.  
00:01:34 6 The parties have stipulated she is an expert in the  
00:01:36 7 field of forensic psychology. So we would offer her to  
00:01:39 8 the Court as such this morning.

00:01:41 9 We'd also agree to stipulate to the reports  
00:01:44 10 that have been submitted in this case, that they are  
00:01:46 11 expert reports for consideration by this Court. That  
00:01:50 12 would include the initial forensic note offered by the  
00:01:54 13 risk panel at docket entry 2 [sic], the reports of Dr.  
00:01:58 14 Brianna Grover at docket entry 8 and 25, and the report  
00:02:02 15 of Dr. Hans Stelmach, the Court-appointed  
00:02:06 16 respondent-selected independent examiner in this case  
00:02:09 17 located at docket entry 17.

00:02:12 18 Finally, the parties have stipulated that  
00:02:15 19 prong 1 is met in this case, meaning that the parties  
00:02:19 20 agree that Mr. Todd Giffen suffers from a mental disease  
00:02:23 21 or defect, specifically in this matter schizophrenia.  
00:02:27 22 Thank you, Your Honor.

00:02:27 23 THE COURT: Thank you, ma'am.

00:02:31 24 Would the respondent like to make any  
00:02:33 25 opening statement?

00:02:35 1 MR. CRAVEN: Your Honor, may it please the  
00:02:42 2 Court, this is Joe Craven. Ms. Petre is correct in the  
00:02:46 3 stipulations that she offered. Those are things we  
00:02:49 4 agreed upon, and I thank you for accepting those.

00:02:51 5 I do not wish to make an opening statement.

00:02:56 6 THE RESPONDENT: Your Honor, this is a  
00:02:59 7 violation. My attorney is refusing to follow my  
00:03:02 8 objective, and he has no agency to speak on my behalf.

00:03:09 9 I'd like to talk about some issues before we  
00:03:10 10 proceed. For example, he just stipulated to facts that  
00:03:13 11 I never stipulated to, and he's not allowed to do that  
00:03:17 12 on my behalf. He can't agree with the government. It  
00:03:23 13 is a violation where the attorney agrees with everything  
00:03:26 14 the state says and has the effect of a prima facie case  
00:03:31 15 where the principal or the accused automatically is  
00:03:35 16 determined to be guilty without contesting the charges  
00:03:38 17 or the issues.

00:03:41 18 So can I please make -- I need to make a  
00:03:44 19 further statement on this issue, because I have a  
00:03:47 20 three-page motion. I need to read it to the Court.

00:03:50 21 THE COURT: All right. Mr. Giffen, let me  
00:03:53 22 take the matters in order. And I will certainly give  
00:03:57 23 you the opportunity to be heard further. I want to  
00:04:03 24 address first the fact that the attorneys, who have the  
00:04:08 25 legal knowledge to enter into stipulations, have

00:04:14 1 stipulated to entry of certain exhibits, reports at  
00:04:20 2 docket entries number 2 [sic], 8, 17, and 25. Let  
00:04:26 3 those be received into evidence.

04:12:05 4 (Whereupon Exhibits at Docket Entries 3, 8,  
04:12:07 5 17, and 25 are admitted into evidence.)

00:04:29 6 THE COURT: Let the expert who has been  
00:04:31 7 proposed also be so received.

00:04:35 8 And we will move forward now with the  
00:04:42 9 understanding, Mr. Giffen, that you are represented by  
00:04:47 10 Mr. Craven. But I will certainly give you a chance to  
00:04:50 11 be heard further.

00:04:51 12 When I give you that opportunity, I would  
00:04:54 13 appreciate a microphone perhaps being pushed closer to  
00:05:02 14 Mr. Giffen.

00:05:03 15 Thank you, Mr. Craven.

00:05:05 16 All right. The burden here is born by the  
00:05:09 17 United States of America. So as is customary, we're  
00:05:13 18 going to hear from the United States of America first.

00:05:20 19 And would you like to call your expert?

00:05:22 20 MS. PETRE: Thank you, Your Honor. Yes.  
00:05:24 21 The United States would like to call Dr. Brianna Grover.

00:05:28 22 THE COURT: Dr. Grover, would you please  
00:05:31 23 raise your right hand. The clerk is going to  
00:05:34 24 administer the oath to you.

00:05:40 25 (Whereupon the witness was sworn by the

00:05:40 1 clerk.)

00:05:54 2 - - -

00:05:54 3 BRIANNA GROVER, Ph.D., DIRECT EXAMINATION

00:05:55 4 BY MS. PETRE:

00:05:55 5 Q. Good morning, Dr. Grover. I'm going to ask you  
00:06:03 6 initially just as a procedural matter just to speak nice  
00:06:07 7 and loud for the Court. We're in a lovely but very  
00:06:10 8 large courtroom, and so we do get a little bit of echo  
00:06:13 9 and feedback. So please speak nice and loudly.

00:06:19 10 It appears there's a bit of a lag. I will try  
00:06:22 11 not to interrupt you and ask that you give it a minute  
00:06:25 12 and try to do the same here.

00:06:30 13 A. Sure. Thank you.

00:06:32 14 Q. Could you please explain to the Court how you  
00:06:34 15 came to evaluate Mr. Giffen in this case.

00:06:36 16 A. Yes. Mr. Giffen was initially charged with  
00:06:44 17 federal offenses in 2018. Those offenses were for  
00:06:50 18 threats via interstate communication and stalking in the  
00:06:53 19 district of Oregon.

00:06:56 20 He was initially set for a competency evaluation  
00:07:01 21 in 2019, and he underwent several competency evaluations  
00:07:06 22 that found him not competent to stand trial.

00:07:12 23 In October of 2019, Mr. Giffen arrived at FMC  
00:07:18 24 Butner for one of those competency evaluations, and he  
00:07:20 25 was assigned to another psychologist at that time for

00:07:24 1 the evaluation. And ultimately that psychologist  
00:07:28 2 requested the Court to make a determination regarding  
00:07:32 3 involuntary medication via Sell given Mr. Giffen's  
00:07:38 4 continued mental health symptoms and his unwillingness  
00:07:42 5 to consent to psychiatric medication at the time.

00:07:45 6 Ultimately that court granted the Sell request in  
00:07:51 7 January of 2021.

00:07:52 8 However, shortly after that Mr. Giffen's defense  
00:07:56 9 attorney on the criminal case appealed that ruling, and  
00:08:01 10 it came back on December 28th of 2021 that he was not  
00:08:08 11 competent and not restorable. And following that  
00:08:12 12 ruling I was assigned to complete a 4246 evaluation on  
00:08:16 13 Mr. Giffen.

00:08:19 14 Q. You mentioned that the charges that brought Mr.  
00:08:21 15 Giffen into federal custody were threats via interstate  
00:08:24 16 communication and stalking. Could you, if you're  
00:08:28 17 aware, please describe the circumstances that led to  
00:08:31 18 those charges?

00:08:33 19 A. Yes. It's my understanding from reading the  
00:08:38 20 criminal investigation report that from July through  
00:08:41 21 September of 2018, Mr. Giffen sent approximately 20  
00:08:49 22 communications via Facebook messenger. These  
00:08:52 23 communications included statements such as "I'm going to  
00:08:55 24 rape you and your staff for abusing a vulnerable person  
00:09:01 25 in your career."



00:09:02 1 By October of 2018 he had continued engaging in  
00:09:06 2 these types of quotes and made a quote such as "Go ahead  
00:09:10 3 and violate my rights as long as you can. I'm going to  
00:09:14 4 kill you."

00:09:14 5 While the investigative materials were redacted,  
00:09:19 6 in speaking with Mr. Giffen's grandmother, it appears  
00:09:23 7 that these statements were made to Congressman Peter  
00:09:26 8 DeFazio, and he was considered a victim in that case, as  
00:09:30 9 well as the staff member that worked for him. And the  
00:09:36 10 chief of staff had requested police presence at all  
00:09:39 11 public gatherings in which Peter DeFazio was going to be  
00:09:43 12 present.

00:09:46 13 Q. During the course of your evaluation have you had  
00:09:49 14 the opportunity to assess Mr. Giffen's present mental  
00:09:54 15 condition?

00:09:54 16 A. Yes, I have.

00:09:56 17 Q. And did you render a diagnosis in this case?

00:10:02 18 A. Yes, I did. I diagnosed Mr. Giffen with  
00:10:05 19 schizophrenia.

00:10:06 20 Q. And what symptoms or behaviors on the part of Mr.  
00:10:10 21 Giffen led you to this diagnosis?

00:10:12 22 A. In review of the collateral record, it appears  
00:10:18 23 that Mr. Giffen has been suffering from symptoms of  
00:10:21 24 schizophrenia since at least 2004 when he was first  
00:10:25 25 hospitalized at Oregon State Hospital.

00:10:30 1           While he's been here at FMC Butner, he has  
00:10:34 2 repeatedly discussed governmental conspiracies and  
00:10:38 3 believes that FMC Butner is a CIA facility and that he  
00:10:43 4 has been sent here to be tortured and murdered by the  
00:10:49 5 government. Additionally, he has expressed beliefs  
00:10:52 6 that it's possible he was sent to this facility as an  
00:10:59 7 undercover individual to expose this being a secret CIA  
00:11:05 8 facility. These types of beliefs are considered to be  
00:11:08 9 persecutory and delusional in which he believes that  
00:11:12 10 other people are out to get him or harm him.

00:11:15 11           Additionally, when he exhibits these types of  
00:11:18 12 symptoms, he often engages in disorganized speech that  
00:11:21 13 is hard to follow.

00:11:22 14           And at other times when he is not agitated he has  
00:11:25 15 evidenced what we call a negative affect, in which he is  
00:11:29 16 very much withdrawn and flat in his presentation to  
00:11:33 17 staff.

00:11:36 18           Q. How have the symptoms of Mr. Giffen's mental  
00:11:40 19 condition impacted his daily functioning?

00:11:48 20           A. Since I met Mr. Giffen, he has --

00:11:55 21           THE COURT: I must stop you for a moment  
00:11:58 22 because the quality of the audio has suddenly become  
00:12:01 23 very poor. I would like our IT person to return to the  
00:12:07 24 room and just see if it can be improved.

00:12:11 25           And while we wait for Andrew, if everyone

00:12:13 1 would just pause. I do want to ask the court reporter  
00:12:17 2 a question that she doesn't need to type.

00:12:36 3 (Discussion had off the record.)

00:12:37 4 THE COURT: Andrew is on his way back to  
00:12:39 5 the room. Thank you for your patience.

00:12:41 6 It may be that we just can't improve this,  
00:12:44 7 but we're going to try.

00:12:44 8 (A pause in the proceedings.)

00:14:32 9 THE COURT: We're still waiting for IT help.

00:14:41 10 Just to clarify, what the government offered  
00:14:45 11 as docket entry number 2 is docket entry number 3,  
00:14:49 12 right?

00:14:50 13 MS. PETRE: My apologies, Your Honor.

00:14:57 14 THE COURT: You can let me know if you think  
00:14:59 15 the clerk's counting is in error. We'll go with that  
00:15:02 16 unless I hear further.

00:15:04 17 Why don't you repeat your last question to  
00:15:07 18 the expert. Let's just see how it goes.

00:15:10 19 MS. PETRE: Thank you, Your Honor.

00:15:10 20 BY MS. PETRE:

00:15:11 21 Q. Dr. Grover, before we paused I asked: How, if at  
00:15:16 22 all, have the symptoms of Mr. Giffen's mental illness or  
00:15:19 23 mental condition impacted his daily functioning?

00:15:28 24 A. Since January of 2022, Mr. Giffen has resided on  
00:15:34 25 our secure mental health unit after he threatened staff,

00:15:39 1 threatened to kill two different staff members on that  
00:15:42 2 date. And since that time he has continued to present  
00:15:46 3 with a decompensation of his mental health resulting in  
00:15:51 4 him threatening staff members and continuing to require  
00:15:54 5 placement on our secure mental health unit.

00:16:00 6 MS. PETRE: Your Honor, may I proceed?

00:16:00 7 THE COURT: Yes.

00:16:02 8 MS. PETRE: Thank you.

00:16:04 9 BY MS. PETRE:

00:16:05 10 Q. I noticed in your report, Dr. Grover, that you  
00:16:07 11 identify Mr. Giffen's schizophrenia as continuous in  
00:16:12 12 nature. Can you explain what that means?

00:16:16 13 A. Sure. What that means is that he has had those  
00:16:23 14 symptoms for a consistent period of time, and those  
00:16:27 15 symptoms have not remitted during that period of time.  
00:16:32 16 There are times in the past in which he has evidenced  
00:16:37 17 periods of improved symptoms with antipsychotic  
00:16:41 18 medication and ultimately been found competent to stand  
00:16:45 19 trial. But most recently, at least since his arrest in  
00:16:49 20 2018, he has not taken any antipsychotic medications,  
00:16:53 21 and his symptoms have persisted.

00:16:57 22 Q. You noted earlier that the earliest history of  
00:17:00 23 hospitalization at Oregon State Hospital was in 2004.  
00:17:06 24 Were there hospitalizations that came after that initial  
00:17:10 25 hospitalization period?

00:17:13 1 A. Yes, there were.

00:17:16 2 Q. Approximately how many?

00:17:20 3 A. In a review of the record it looks like Mr.  
00:17:24 4 Giffen was inpatiently hospitalized on eight occasions  
00:17:29 5 from 2004 to 2013 at Oregon State Hospital.  
00:17:34 6 Additionally he was briefly hospitalized at least three  
00:17:37 7 additional times at another facility.

00:17:41 8 Q. During or following those periods of  
00:17:45 9 hospitalization, were you able to determine from the  
00:17:47 10 records whether Mr. Giffen had ever been prescribed  
00:17:51 11 medications to take in the community?

00:17:55 12 A. Yes, it appears that he was prescribed  
00:17:58 13 antipsychotic medications to take in the community.

00:18:01 14 Q. And based on those records, were you able to  
00:18:04 15 determine Mr. Giffen's level of compliance with those  
00:18:08 16 medications in the community?

00:18:12 17 A. Yes. The records indicate that oftentimes when  
00:18:15 18 Mr. Giffen was released from custody he would stop  
00:18:18 19 taking those medications and thus would decompensate in  
00:18:23 20 his mental health symptoms.

00:18:25 21 Q. You noted for the record that Mr. Giffen is not  
00:18:27 22 presently taking any antipsychotic medication, but are  
00:18:31 23 you aware of whether or not his treatment team has  
00:18:34 24 recommended a course of treatment for his schizophrenia?

00:18:39 25 A. Yes, at this time the treatment team does

00:18:42 1 recommend, of course, antipsychotic medication to treat  
00:18:45 2 him. The psychiatry providers routinely inquire  
00:18:51 3 whether or not he is interested in taking medication,  
00:18:53 4 and he has consistently denied those requests to  
00:18:57 5 consider antipsychotic medication.

00:18:59 6 Q. Has Mr. Giffen provided staff with a reasoning or  
00:19:03 7 a rationale as to why he is not interested in taking the  
00:19:08 8 medication recommended to him?

00:19:10 9 A. Yes. Mr. Giffen has explained on numerous  
00:19:14 10 occasions his belief that when taking antipsychotic  
00:19:17 11 medications previously at Oregon State Hospital it  
00:19:21 12 created brain damage to him, and he believes that  
00:19:24 13 antipsychotic medications are used to potentially kill  
00:19:31 14 people when they are treated with them.

00:19:35 15 Q. Is there any evidence in the record that Mr.  
00:19:38 16 Giffen suffered any brain damage or related symptoms  
00:19:42 17 while at Oregon State Hospital?

00:19:44 18 A. No. And, in fact, there are records from Oregon  
00:19:50 19 State Hospital that once he was treated and compliant  
00:19:52 20 with medications at one point, he underwent in depth  
00:19:58 21 medical assessments, and no damage was found or noted.

00:20:01 22 Q. I see in your report that you also diagnosed Mr.  
00:20:05 23 Giffen with borderline personality disorder. Could you  
00:20:09 24 explain that diagnosis?

00:20:12 25 A. Yes. I left the borderline personality disorder

00:20:17 1 by history, and the reason I did that is because this  
00:20:22 2 diagnosis is one in which an individual experiences  
00:20:25 3 pervasive difficulties in their relationships with  
00:20:28 4 others as well as with their affect and their emotions.  
00:20:33 5 And the symptoms include things like impulsivity,  
00:20:38 6 suicidal ideation, engaging in agitation or angry  
00:20:46 7 outbursts at other people. And these symptoms are  
00:20:49 8 similar to those of schizophrenia. And so I left that  
00:20:56 9 per history because given the time I have known Mr.  
00:21:01 10 Giffen, he has not been prescribed antipsychotic  
00:21:03 11 medication, and these symptoms could be better accounted  
00:21:06 12 for by a schizophrenia diagnosis alone. However, given  
00:21:10 13 that he has had this diagnosis on the record since  
00:21:14 14 approximately 2013, I left it per history until he is  
00:21:19 15 treated with antipsychotic medication, when it can be  
00:21:22 16 better determined whether the symptoms continue or  
00:21:25 17 persist with the medication, which would be more  
00:21:29 18 indicative that it is a borderline personality disorder  
00:21:34 19 versus schizophrenia alone.

00:21:42 20 Q. How would you characterize Mr. Giffen's  
00:21:45 21 adjustment to life at the Medical Center in Butner?

00:21:51 22 A. I would characterize Mr. Giffen as there have  
00:21:55 23 been times where he has stayed on the open mental health  
00:22:01 24 unit for periods of time; however, while he was on the  
00:22:06 25 open mental health unit, he is often isolative and stays

00:22:10 1 in his room for the majority of the time.

00:22:16 2 What has happened that has led to his secure  
00:22:20 3 housing on a few different occasions is when he has been  
00:22:22 4 confronted by staff to comply with routine rules; for  
00:22:29 5 example, on one occasion an officer approached him in  
00:22:33 6 order to engage in a cell search, which is routinely  
00:22:36 7 done here at FMC Butner and is required by the officers  
00:22:40 8 to engage in on a routine basis. Mr. Giffen responded  
00:22:44 9 to the officer's request in a hostile manner, did not  
00:22:48 10 want the officer to search his room, stated the officer  
00:22:51 11 did not have the authority and could not search his  
00:22:55 12 room, and then ultimately threatened to kill the  
00:22:59 13 officer. That incident resulted in Mr. Giffen being  
00:23:02 14 placed in our secure housing unit.

00:23:05 15 Once Mr. Giffen is placed in secure housing, he  
00:23:08 16 typically adjusts very poorly to placement in secure  
00:23:12 17 housing. He does not do well in secure housing. He  
00:23:15 18 often continues to threaten others while he is in secure  
00:23:20 19 housing, which makes it very difficult to get him back  
00:23:23 20 out to the open mental health unit, where he does do a  
00:23:26 21 little bit better.

00:23:29 22 Q. You mentioned an incident where he threatened an  
00:23:32 23 officer or a staff member at the Medical Center. Has  
00:23:36 24 Mr. Giffen received any incident reports during the  
00:23:39 25 course of his time at Butner?



00:23:43 1 A. Yes, he has.

00:23:47 2 Q. Could you describe those incident reports for me?

00:23:50 3 A. Sure. Mr. Giffen has received four incident  
00:23:57 4 reports for threatening bodily harm. Two of those were  
00:24:01 5 in 2021, and two of them were this year in 2022. As I  
00:24:07 6 mentioned earlier, the first incident occurred in March  
00:24:11 7 of 2021 where the officer was attempting to search his  
00:24:15 8 cell. He made statements including, "You can't search  
00:24:18 9 my cell," "You can't take my stuff you dumb  
00:24:22 10 motherfucker," and, "I will K.O. your faggot ass."  
00:24:26 11 That incident led to him being placed in a secure mental  
00:24:29 12 health unit.

00:24:29 13 Very shortly after that in April of 2021 when the  
00:24:33 14 lieutenant was engaging with him, he made statements  
00:24:36 15 such as, "You're all dead, motherfucker," "Someone is  
00:24:40 16 going to need to shake his ass," and continued to engage  
00:24:43 17 in expletive words towards the staff member.

00:24:51 18 In 2022 one of those incidents he actually  
00:24:54 19 threatened two different staff members on the same day.  
00:24:59 20 When a psychologist was attempting to interview him  
00:25:03 21 regarding a sexual abuse allegation he had made against  
00:25:09 22 staff, he told her, "Fuck you, bitch. You have CIA  
00:25:13 23 training and will cover for everyone," "you've been  
00:25:16 24 beating and raping me," "fuck you," "I will kill you."

00:25:19 25 He further told the lieutenant that day when he

00:25:22 1 was placed in restraints, he attempted to lunge out of  
00:25:27 2 the restraint chair and yelled, "I will kill all of  
00:25:30 3 you." He continued to use expletive language during  
00:25:33 4 that incident as well. He was emergently medicated on  
00:25:37 5 that account.

00:25:38 6 In addition he has received incident reports for  
00:25:42 7 refusing to obey an order, mail abuse, being in an  
00:25:50 8 unauthorized area, being insolent towards staff on  
00:25:53 9 several occasions. And there have been other incidents  
00:25:56 10 in which he has made threatening statements to staff in  
00:25:58 11 which he has not received incident reports for but has  
00:26:01 12 been documented in his clinical record.

00:26:04 13 Q. Would one of those incidents have occurred when  
00:26:08 14 he threatened one of the associate wardens at the  
00:26:11 15 Medical Center?

00:26:13 16 A. Yes. That incident occurred in March of 2022.  
00:26:19 17 Earlier that day Mr. Giffen had received an incident  
00:26:23 18 report for phone abuse in which he had called his -- one  
00:26:28 19 of his grandparents on the telephone and requested that  
00:26:31 20 his grandparent three-way call his prior attorney. The  
00:26:37 21 grandparent did attempt a three-way call which the  
00:26:41 22 attorney did not answer. However, making three-way  
00:26:44 23 calls is against institutional rules, so he received an  
00:26:47 24 incident report for that.

00:26:49 25 Later that day when the associate warden was

00:26:51 1 making routine housing unit rounds on the secure mental  
00:26:55 2 health unit, he engaged in a litany of complaints  
00:26:59 3 towards her regarding his alleged abuse and torture that  
00:27:04 4 he feels he has been undergoing since being at FMC  
00:27:08 5 Butner. When she attempted to encourage him to work  
00:27:11 6 with his treatment provider and comply with treatment  
00:27:14 7 recommendations, he responded by saying, "Fuck you,  
00:27:19 8 motherfucker. I'm going to wrap a phone cord around  
00:27:22 9 your neck. I will put a bullet in your brain."

00:27:28 10 Q. Are these incidents that you've described the  
00:27:32 11 only incidents of verbally aggressive or abusive  
00:27:37 12 behavior that Mr. Giffen has exhibited while at the  
00:27:40 13 Medical Center?

00:27:42 14 A. No. These are not the only incidents. As I  
00:27:46 15 mentioned, he has engaged in hostile and verbally  
00:27:49 16 aggressive behavior on a fairly regular basis, and he  
00:27:53 17 has not received incident reports for all of those  
00:27:57 18 verbally aggressive incidents. However, many more have  
00:28:00 19 been documented in his clinical record.

00:28:05 20 Q. Where is Mr. Giffen currently residing within the  
00:28:09 21 mental health unit?

00:28:11 22 A. He resides in 1E, which is our secure mental  
00:28:16 23 health unit in which he is in a cell by himself.

00:28:22 24 Q. Does Mr. Giffen on that unit have the opportunity  
00:28:25 25 to attend any groups or to receive any treatment?

00:28:29 1 A. Yes, he does. On our secure mental health unit  
00:28:33 2 right now there are various groups that are offered.  
00:28:37 3 One of the most regular groups that we have encouraged  
00:28:42 4 Mr. Giffen to attend is the Illness Management and  
00:28:46 5 Recovery Group, which is offered by one of our treatment  
00:28:49 6 providers. Mr. Giffen initially expressed willingness  
00:28:52 7 to attend this group. However, he has been invited to  
00:28:56 8 this group since at least June of 2022, and he has  
00:29:00 9 declined every single session of the group, and most  
00:29:04 10 recently stated, "I will die before I attend that  
00:29:07 11 group."

00:29:09 12 Q. Has Mr. Giffen attended any of the groups that  
00:29:12 13 have been offered to him?

00:29:15 14 A. No, he has not attended any. And, in fact, most  
00:29:18 15 recently he will not even leave his cell to attend  
00:29:22 16 recreation, to shower, to meet with staff members  
00:29:27 17 outside of his cell. He expresses that he has too much  
00:29:31 18 anxiety to leave his cell.

00:29:36 19 Q. I'd like to move now to your risk assessment of  
00:29:39 20 Mr. Giffen. Did you utilize any tools or structured  
00:29:43 21 judgment modules in order to assess Mr. Giffen's risk  
00:29:47 22 moving forward?

00:29:49 23 A. Yes, I did. I used HCR-20, Version 3.

00:29:54 24 Q. And what factors specifically does that  
00:29:56 25 assessment look at in order to help guide your

00:29:59 1 assessment of his risk?

00:30:02 2 A. That assessment looked at three major categories  
00:30:06 3 of factors, including historical risk factors, which are  
00:30:12 4 static factors that generally do not change over time;  
00:30:15 5 it looked at clinical risk factors which focus on how a  
00:30:21 6 person is doing clinically, and these can be dynamic and  
00:30:24 7 change over time based on the treatment an individual is  
00:30:27 8 receiving; and then it also looks at risk management  
00:30:31 9 factors which focus on an individual's plan for release  
00:30:35 10 and whether or not those plans are suitable to meet  
00:30:39 11 their needs, their mental health needs in the community.

00:30:44 12 Q. Let's start by talking about the historical  
00:30:46 13 factors in this case. Which factors did you find to be  
00:30:52 14 most relevant in your analysis of Mr. Giffen's risk?

00:30:56 15 A. The most relevant factors that I looked at were  
00:31:00 16 Mr. Giffen's history of violence, his mental health  
00:31:04 17 disorder -- major mental health disorder, as well as his  
00:31:08 18 treatment and supervision response.

00:31:11 19 Q. Let's start by talking about his history of  
00:31:13 20 violence. What information were you able to find in  
00:31:16 21 the collateral sources that indicated that Mr. Giffen  
00:31:21 22 has a history of engaging in violent behavior?

00:31:25 23 A. In reviewing the collateral records, it looks  
00:31:31 24 like his first act of violence occurred in 2004 in which  
00:31:34 25 he was charged with menacing, harassment, and unlawful

00:31:38 1 use of a weapon after he threatened his grandmother with  
00:31:42 2 a 13-inch knife stating, "It's time for you to die."  
00:31:45 3 He was arrested and received competency restoration for  
00:31:50 4 that offense and was ultimately adjudicated guilty  
00:31:55 5 except for insanity.

00:31:59 6 At some point following that Mr. Giffen was again  
00:32:02 7 hospitalized at the state psychiatric hospital, and  
00:32:06 8 records indicate that from June of 2008 to January of  
00:32:11 9 2009 he had at least 15 documented episodes of assault  
00:32:16 10 which were mostly towards staff members at the hospital.  
00:32:22 11 These assaults resulted in some of the staff members  
00:32:25 12 requiring treatment for being punched, eye gouges, and  
00:32:30 13 scratches. And he additionally engaged in property  
00:32:33 14 damage including punching holes in the wall at the  
00:32:36 15 hospital during this time.

00:32:39 16 During this hospitalization time he required  
00:32:44 17 restraints and was involuntarily medicated after these  
00:32:49 18 incidents.

00:32:50 19 At some point he was released from the hospital,  
00:32:52 20 and in 2011 he was again arrested for various charges,  
00:32:59 21 including assault. And in reading the investigative  
00:33:04 22 documents, it appears that Mr. Giffen assaulted his  
00:33:07 23 grandfather by forcibly opening a door, putting a hole  
00:33:11 24 in the wall, and then pushed his grandfather over in a  
00:33:15 25 chair. The police were called as a result of this

00:33:18 1 incident, and when the police arrived, he resisted  
00:33:21 2 arrest and punched one officer and then gouged the eye  
00:33:26 3 of another officer.

00:33:29 4 Additionally he reportedly attempted to get an  
00:33:32 5 officer's handgun that was on his waist and only  
00:33:35 6 released his grip on another officer's face when he was  
00:33:39 7 threatened with being tased.

00:33:43 8 He was evaluated at the jail and again placed in  
00:33:45 9 a psychiatric hospital at that time, and in March of  
00:33:50 10 2012, just before his discharge from the hospital, he  
00:33:54 11 wrote his psychiatrist a threatening letter.

00:33:59 12 Mr. Giffen was again charged with assault in 2013  
00:34:06 13 after he reportedly punched his grandfather while they  
00:34:09 14 were driving in a truck together because he believed his  
00:34:11 15 grandfather was spying on him for the Central  
00:34:15 16 Intelligence Agency, the CIA.

00:34:19 17 And finally, we've already discussed the instant  
00:34:25 18 offense in which he was messaging threatening messages  
00:34:28 19 to Congressman DeFazio, as well as his behavior while  
00:34:32 20 he's been here at FMC Butner.

00:34:34 21 Q. You mentioned on a few occasions that Mr.  
00:34:37 22 Giffen's conduct was directed towards his grandmother  
00:34:42 23 and his grandfather. To your knowledge was he residing  
00:34:47 24 with these individuals during that time?

00:34:53 25 A. It is my understanding he was residing with his

00:34:56 1 grandparents during these assaults.

00:35:00 2 Q. You also cited the historical issue of Mr.  
00:35:04 3 Giffen's major mental disorder as one of the risk  
00:35:08 4 factors in this case. How, if at all, does his  
00:35:12 5 diagnosis factor in as a risk factor?

00:35:18 6 A. Well, as mentioned, Mr. Giffen has suffered a  
00:35:24 7 mental illness since a young age, but at least -- he has  
00:35:28 8 being diagnosed consistently with schizophrenia and  
00:35:31 9 demonstrating symptoms of schizophrenia since at least  
00:35:34 10 2004. This represents a risk factor for Mr. Giffen  
00:35:39 11 because what we know is that the longer somebody is  
00:35:41 12 diagnosed with a psychotic disorder such as  
00:35:46 13 schizophrenia and goes untreated, the more likely -- the  
00:35:50 14 more difficult it is to treat them in the future.  
00:35:53 15 Schizophrenia is a lifelong condition in which Mr.  
00:35:57 16 Giffen will continue to suffer from throughout the  
00:36:01 17 remainder of his lifetime.

00:36:03 18 Q. And finally, you cited one of the most salient  
00:36:07 19 factors as being his treatment and supervision response.  
00:36:10 20 Can you tell us a little bit about how that historical  
00:36:14 21 factor plays in?

00:36:15 22 A. Sure. Records indicate that there have been  
00:36:18 23 times where Mr. Giffen has been restored to competency  
00:36:22 24 with antipsychotic medication. That indicates that  
00:36:26 25 with the treatment of antipsychotic medications, his



00:36:29 1 symptoms have remitted enough to be competent and  
00:36:32 2 participate in the court proceedings. However, as  
00:36:37 3 discussed earlier, when released from the hospital, he  
00:36:40 4 would often discontinue his medication, which would  
00:36:45 5 result in psychiatric decompensation and require  
00:36:48 6 placement at the state psychiatric hospital again.

00:36:51 7 Additionally, there are records that at least on  
00:36:54 8 one occasion he violated the terms of his conditional  
00:36:59 9 release from the hospital due to not liking the group  
00:37:02 10 home that he was placed at.

00:37:07 11 Q. I'd like to move now to the clinical factors in  
00:37:10 12 this case. Could you explain which factors you found  
00:37:13 13 to be present for Mr. Giffen?

00:37:15 14 A. Sure. Currently present are Mr. Giffen has  
00:37:23 15 evidenced problems with insight, problems with  
00:37:26 16 instability, symptoms of major mental disorder, and  
00:37:31 17 problems with treatment and supervision response.

00:37:35 18 Q. And let's start by talking about Mr. Giffen's  
00:37:37 19 insight. Now, this factor is more than just an  
00:37:41 20 understanding that he has a mental illness; is that  
00:37:48 21 right?

00:37:48 22 A. Yes, that is right. In addition to an individual  
00:37:50 23 having understanding about their mental illness, this  
00:37:54 24 factor also takes into account the individual's  
00:37:59 25 understanding and insight into their need for treatment

00:38:02 1 and their risk of violence towards others.

00:38:05 2 Q. And could you describe how you assessed Mr.  
00:38:11 3 Giffen's insight?

00:38:13 4 A. Sure. In talking with Mr. Giffen, he denies  
00:38:19 5 being diagnosed with a mental illness. However, he  
00:38:24 6 does routinely discuss his belief that he has brain  
00:38:26 7 damage and delirium as well as PTSD symptoms from  
00:38:35 8 previous treatment with antipsychotic medications.  
00:38:37 9 That leads to his refusal to engage in mental health  
00:38:42 10 treatment, including psychiatric medications, because he  
00:38:46 11 believes the medications have killed people.

00:38:49 12 In addition he does not evidence an understanding  
00:38:52 13 of his risk of violence towards others. When routinely  
00:38:58 14 asked about his behavior in which he has threatened  
00:39:01 15 staff, a day or two after the fact Mr. Giffen minimizes  
00:39:06 16 his behaviors and has made statements such as "During  
00:39:10 17 incidents of torture and isolation I can threaten to  
00:39:14 18 kill people because y'all are using violence and then  
00:39:17 19 just quoting what I'm saying." This lack of  
00:39:21 20 understanding that, you know, threatening to kill people  
00:39:22 21 is very serious, and it is taken very seriously when he  
00:39:27 22 does this. And he minimizes his behavior greatly and  
00:39:31 23 blames staff for keeping him in isolation.

00:39:36 24 Q. One of the factors that I think you've touched  
00:39:40 25 upon a little bit, but I'd like to hear more about, is

00:39:42 1 Mr. Giffen's instability. Could you tell us about  
00:39:44 2 that?

00:39:45 3 A. Sure. When I took over Mr. Giffen's case, Mr.  
00:39:51 4 Giffen was on an open mental health unit. However, in  
00:39:55 5 March of 2021 was the first time that I took over his  
00:39:59 6 case that he required placement in the secure mental  
00:40:01 7 health unit. He remained in the secure mental health  
00:40:05 8 unit due to his continued threatening and destructive  
00:40:10 9 behavior I believe until May of 2021. At that point,  
00:40:14 10 again, he remained on the open mental health unit until  
00:40:17 11 January of 2022, which he -- as I mentioned earlier, he  
00:40:23 12 remained there at this time due to his agitated behavior  
00:40:27 13 towards staff and his continued threats towards staff.

00:40:35 14 Q. What steps would need to be taken in order to  
00:40:39 15 work with Mr. Giffen to transition to a less restrictive  
00:40:43 16 mental health unit?

00:40:44 17 A. Yes, we have been working with Mr. Giffen and  
00:40:49 18 trying to work with him on this, given his request to  
00:40:51 19 move and return to an open mental health unit at times.  
00:40:55 20 The steps that we would want to see is first that Mr.  
00:40:59 21 Giffen leave his cell to participate in recreation  
00:41:03 22 opportunities available to him as well as the group  
00:41:06 23 treatment opportunities available to him. These  
00:41:09 24 periods of time leaving his cell, walking from his cell  
00:41:13 25 to the area in which recreation and group treatment

00:41:18 1 occur would allow him to evidence that he can maintain  
00:41:21 2 appropriate behavior and not engage in threatening  
00:41:24 3 behaviors toward staff.

00:41:27 4 We would also really encourage and like to see  
00:41:30 5 Mr. Giffen consider psychiatric medication prior to  
00:41:35 6 leaving secure housing.

00:41:37 7 Once he could engage in appropriate behaviors  
00:41:39 8 such as going to recreation and attending group, the  
00:41:43 9 next step would likely be to offer him escorted passes  
00:41:47 10 to our open mental health unit where he could go to the  
00:41:51 11 open mental health unit for a period of time. And,  
00:41:54 12 again, if he engaged in appropriate behavior during  
00:41:57 13 those passes, we could consider him for a gradual  
00:42:01 14 release plan on our open mental health unit or decide  
00:42:04 15 that he was appropriate to be on the open mental health  
00:42:07 16 unit full-time.

00:42:08 17 Q. And have these opportunities been presented to  
00:42:12 18 Mr. Giffen such that he understands that this is what it  
00:42:14 19 would take for him to transition back to a less  
00:42:17 20 restrictive unit?

00:42:19 21 A. I have attempted to explain to Mr. Giffen on  
00:42:24 22 many, many occasions. Whether or not he fully  
00:42:27 23 understands that, I don't totally believe that he does.  
00:42:34 24 He continues to express anxiety about leaving the open  
00:42:37 25 mental health unit while also requesting to be on the

00:42:40 1 open mental health unit. So I don't know that he fully  
00:42:43 2 understands the process, and that has been explained to  
00:42:46 3 him numerous times.

00:42:47 4 Q. You cited that his present clinical treatment and  
00:42:52 5 supervision response is of concern to you. Are there  
00:42:56 6 other factors other than the ones you've just  
00:42:59 7 highlighted for us that you'd like to talk about as it  
00:43:02 8 relates to that risk factor?

00:43:04 9 A. Yes. I would like to just highlight that Mr.  
00:43:10 10 Giffen has routinely requested treatment opportunities  
00:43:14 11 at FMC Butner; however, when asking him further about  
00:43:21 12 these treatment opportunities that he would like, he has  
00:43:23 13 responded with things such as habilitation, housing,  
00:43:28 14 money, whole body recreation, chiropractor, massage  
00:43:33 15 therapy, hot tub, a tutor for English, learning a new  
00:43:38 16 language, snow boarding, and trips to Europe and Japan,  
00:43:43 17 as examples. All of these are things that we are  
00:43:46 18 unable to provide in terms of treatment opportunities.  
00:43:49 19 And when explained to him the treatment opportunities  
00:43:52 20 that we are able to offer him and that we think would be  
00:43:54 21 effective for his mental illness, he is unwilling to  
00:43:57 22 accept those.

00:43:59 23 Q. And finally, you noted that his present symptoms  
00:44:02 24 of a major mental disorder is also a risk factor. Why  
00:44:06 25 is that the case?

00:44:10 1 A. Well, Mr. Giffen continues to have persecutory  
00:44:13 2 delusions that other people, including those of us that  
00:44:16 3 work here at the facility and in the government, are  
00:44:19 4 trying to torture him and harm him. Thus, those  
00:44:23 5 beliefs are what lead him often to directly threaten to  
00:44:28 6 kill staff here at this facility.

00:44:33 7 Q. Moving now to the risk management factors, does  
00:44:36 8 Mr. Giffen have a plan for what would happen if he were  
00:44:40 9 to be released?

00:44:41 10 A. It's not totally clear. Mr. Giffen provided a  
00:44:45 11 few different possibilities if he were to be released.  
00:44:49 12 At one point he discussed moving to New York City  
00:44:53 13 because he explained that they gave him a housing  
00:44:56 14 voucher to pay rent. It is unclear if that is  
00:45:00 15 accurate. However, he also discussed possibly  
00:45:03 16 returning to Portland, Oregon; and he would either  
00:45:07 17 reside in a homeless shelter or live with his  
00:45:10 18 grandparents.

00:45:12 19 Q. In your opinion are any of these potential  
00:45:15 20 release plans appropriate for Mr. Giffen and his mental  
00:45:22 21 health needs?

00:45:22 22 A. It's my opinion that these are not appropriate  
00:45:25 23 for Mr. Giffen. I actually had the opportunity to  
00:45:29 24 speak with Mr. Giffen's grandfather regarding this  
00:45:32 25 possible release plan. While Mr. Giffen's grandfather

00:45:38 1 stated that it would be up to his grandmother whether or  
00:45:41 2 not he could reside with them, it's notable that Mr.  
00:45:45 3 Giffen has assaulted both of his grandparents while  
00:45:47 4 living with them in the past, and his grandfather does  
00:45:51 5 not believe that Mr. Giffen has a mental illness.

00:45:56 6 Q. Are there any other risk management factors that  
00:45:59 7 you would like to highlight for the Court?

00:46:02 8 A. I just would like to also note that Mr. Giffen's  
00:46:06 9 personal support, outside of his grandparents, who do  
00:46:11 10 seem to provide him with some support in maintaining  
00:46:15 11 communication with him while he is here -- he does not  
00:46:18 12 have a broad network that would be supportive of his  
00:46:24 13 mental health needs. He identified several individuals  
00:46:26 14 that he wanted to connect with that included NSA  
00:46:31 15 whistle-blowers and indicated that he wanted to have  
00:46:35 16 these whistle-blowers help him get his story into *The*  
00:46:38 17 *New York Times* in order to expose the torture that he's  
00:46:42 18 been undergoing while he's been here at FMC Butner.

00:46:46 19 Q. And just to clarify for the record, is there any  
00:46:50 20 evidence that Mr. Giffen has been tortured or abused by  
00:46:54 21 any staff members at the Medical Center in Butner during  
00:46:58 22 the course of his treatment there?

00:47:00 23 A. No, there has been no evidence of that. And, in  
00:47:03 24 fact, when he has made allegations of sexual abuse, we  
00:47:06 25 followed the appropriate protocol to investigate those.

00:47:13 1 Q. Are you able to find a nexus or a relationship  
00:47:20 2 between Mr. Giffen's mental condition and his acts of  
00:47:25 3 violence?

00:47:28 4 A. Yes. The nexus -- based on Mr. Giffen's  
00:47:34 5 persecutory delusions that other people are out to harm  
00:47:38 6 him or get him, that is when he has engaged in violent  
00:47:42 7 behaviors towards others in an effort to protect  
00:47:45 8 himself.

00:47:48 9 Q. Are there any protective or mitigating factors in  
00:47:51 10 the record that might lend themselves in Mr. Giffen's  
00:47:56 11 favor?

00:47:58 12 A. Mr. Giffen does have a major protective factor in  
00:48:02 13 the fact that he does not have a history of using  
00:48:06 14 illegal substances. He has denied using such. His  
00:48:11 15 grandparents have confirmed that. And there's no  
00:48:13 16 indication in the record that he's used illegal  
00:48:16 17 substances.

00:48:17 18 In addition, most of his criminal offenses appear  
00:48:20 19 related to his mental illness and not such from  
00:48:25 20 antisocial personality disorder or a general disregard  
00:48:29 21 for the law.

00:48:32 22 Q. I see in your report that after consideration of  
00:48:34 23 all of the risk and protective factors encompassed in  
00:48:38 24 the HCR-20 that you rated Mr. Giffen in the high risk  
00:48:42 25 category for future of violence. Could you just



00:48:46 1 summarize how you came to that categorization based on  
00:48:50 2 the risk factors?

00:48:53 3 A. Sure. Currently, given Mr. Giffen's chronic  
00:48:57 4 mental health symptoms as well as his refusal to engage  
00:49:00 5 in any mental health treatment, he is at a high risk to  
00:49:05 6 harm others without any kind of special controls in  
00:49:07 7 place.

00:49:10 8 Q. Are you aware of whether any attempts at state  
00:49:13 9 placement have been made for Mr. Giffen?

00:49:16 10 A. Yes, I am.

00:49:18 11 Q. And what, if any, attempts have been made to  
00:49:21 12 secure him as a state placement opportunity?

00:49:25 13 A. It's my understanding that social work has  
00:49:28 14 reached out to both the state of New York as well as the  
00:49:31 15 state of Oregon in order to determine whether or not  
00:49:34 16 they would take Mr. Giffen into their state hospital  
00:49:37 17 system. However, no response has been received yet.

00:49:42 18 Q. Are there any other factors in Mr. Giffen's case  
00:49:45 19 or in his risk assessment that you'd like to share with  
00:49:48 20 the Court at this time?

00:49:50 21 A. No, I think we've covered them all.

00:49:53 22 Q. So, Dr. Grover, what is your ultimate opinion as  
00:49:56 23 to whether or not Mr. Giffen meets criteria for  
00:49:59 24 commitment today?

00:50:00 25 A. It's my opinion that Mr. Giffen does meet

00:50:03 1 commitment criteria pursuant to 4246.

00:50:07 2 MS. PETRE: Thank you, Dr. Grover.

00:50:11 3 Thank you, Your Honor.

00:50:12 4 THE COURT: Any questions from the  
00:50:13 5 respondent's lawyer?

00:50:16 6 MR. CRAVEN: Yes, Your Honor, just a few,  
00:50:18 7 please.

00:50:18 8 - - -

00:50:18 9 BRIANNA GROVER, Ph.D., CROSS-EXAMINATION

00:50:19 10 BY MR. CRAVEN:

00:50:19 11 Q. Dr. Grover, am I right in thinking that the  
00:50:25 12 picture moving forward, recommendations for Mr. Giffen's  
00:50:28 13 treatment are to take antipsychotic medication and to  
00:50:35 14 also participate in the treatment programs that are  
00:50:38 15 available here at Butner?

00:50:39 16 A. Yes, that's correct.

00:50:41 17 Q. And it sounds like from reviewing some of the  
00:50:44 18 past records of this case, particularly from Oregon  
00:50:50 19 State Hospital, that Mr. Giffen has responded well to  
00:50:55 20 antipsychotic medication in the past?

00:50:57 21 A. Yes, that's my understanding.

00:50:58 22 Q. And that he's also participated in treatment  
00:51:03 23 programs once he's become medicated?

00:51:05 24 A. Yes.

00:51:06 25 Q. I noticed in the records very concerning

00:51:13 1 information about how Mr. Giffen may have been abused or  
00:51:16 2 traumatized as a young child. I think some of that  
00:51:21 3 included emotional abuse, but also starvation, being  
00:51:26 4 placed in a basement, being forced to wear diapers and  
00:51:31 5 being fed baby food, and things like that. Where does  
00:51:36 6 that fit into the overall, sort of, puzzle or picture of  
00:51:40 7 Mr. Giffen?

00:51:41 8 A. All those things that you mentioned have been  
00:51:45 9 things that Mr. Giffen has reported regarding his  
00:51:49 10 childhood. It's unclear whether or not those have  
00:51:52 11 actually occurred or they're part of his delusional  
00:51:55 12 beliefs. However, if he has undergone those, an  
00:52:00 13 individual who's experienced traumatic things like that  
00:52:03 14 is unlikely to trust other people and have difficulty  
00:52:06 15 gaining that rapport with treatment providers, and that  
00:52:10 16 is something they would continue to work on him to build  
00:52:12 17 that rapport for him to be able to hopefully engage with  
00:52:16 18 them in a positive manner.

00:52:20 19 Q. I just have one other question. I saw in the  
00:52:23 20 records a mention about a 2015 evaluation that I believe  
00:52:29 21 was done at the University of California Davis, and that  
00:52:34 22 I think maybe a couple of doctors diagnosed Mr. Giffen,  
00:52:38 23 one with chronic traumatic encephalopathy; I think it's  
00:52:44 24 often referred to as CTE. We hear a lot about it in the  
00:52:49 25 football context, the head injury context. And another

00:52:52 1 diagnosis of -- kind of similar -- of post-concussive  
00:52:55 2 syndrome. How does that fit into your evaluation or  
00:53:00 3 your opinion of Mr. Giffen?

00:53:03 4 A. It's my understanding that both of those were  
00:53:06 5 conducted by medical providers. I think neurologists  
00:53:10 6 conducted one of those, and I don't remember who -- the  
00:53:13 7 type of medical provider did the other. It is possible  
00:53:15 8 that those exist. However, I believe that it's also  
00:53:19 9 possible that the symptoms that he was exhibiting are  
00:53:22 10 better accounted for by the longstanding schizophrenia  
00:53:25 11 diagnosis that he has had.

00:53:28 12 As mentioned earlier, Oregon State Hospital had  
00:53:31 13 undergone numerous medical assessments of Mr. Giffen  
00:53:34 14 that indicated that those were not -- that he was not --  
00:53:39 15 had any medical illnesses that would account for his  
00:53:42 16 symptoms or his traumatic complaints that he had  
00:53:47 17 complained of. I don't believe I've had the  
00:53:50 18 opportunity to fully review those evaluations in person,  
00:53:53 19 so I don't know the full context of them other than he  
00:53:56 20 was diagnosed with those at some point.

00:53:57 21 Q. Is it fair to say at this point the sort of  
00:54:00 22 current thinking from you and Butner staff is that he  
00:54:04 23 does not have an organic physical problem that's causing  
00:54:10 24 his symptoms and that you believe the symptoms and the  
00:54:15 25 delusion and the threats and that type of behavior is

00:54:17 1 better explained by the schizophrenia diagnosis?

00:54:20 2 A. Yes, that's correct.

00:54:23 3 MR. CRAVEN: That's all the questions I  
00:54:25 4 have, Your Honor. Thank you.

00:54:26 5 THE COURT: Thank you, counsel.

00:54:27 6 Any redirect?

00:54:28 7 MS. PETRE: No, Your Honor.

00:54:28 8 And the government would rest at this time.

00:54:30 9 THE COURT: All right. We have heard fully  
00:54:32 10 then from the government.

00:54:34 11 Does the respondent wish to present any  
00:54:37 12 evidence?

00:54:39 13 MR. CRAVEN: Your Honor, as you know from  
00:54:42 14 the docket and the record, we selected Dr. Hans Stelmach  
00:54:50 15 as an examiner in this case. He performed an  
00:54:53 16 evaluation; he wrote a report that's on the docket. We  
00:54:55 17 do not ask him to be a witness today. So we are not  
00:55:00 18 presenting any evidence.

00:55:02 19 THE COURT: So noted. Thank you, counsel.

00:55:06 20 Would the petitioner wish to make any  
00:55:08 21 closing argument?

00:55:12 22 MS. PETRE: Just briefly, Your Honor.

00:55:14 23 THE RESPONDENT: I'd like to speak, Your  
00:55:17 24 Honor.

00:55:17 25 THE COURT: Yes, sir. I'm certainly going

00:55:20 1 to let you speak.

00:55:20 2 Let's hear from the petitioner, though.

00:55:23 3 MS. PETRE: Thank you, Your Honor.

00:55:23 4 Both the evaluators in this case agree that

00:55:26 5 Mr. Giffen meets criteria both for a mental disease or

00:55:30 6 defect, but also for civil commitment in this matter.

00:55:34 7 Both the evaluators, Dr. Stelmach and Dr. Grover,

00:55:37 8 diagnosed Mr. Giffen with schizophrenia. It's a

00:55:41 9 longstanding diagnosis for him dating back to at least

00:55:44 10 2004, though Dr. Grover noted that the records indicate

00:55:47 11 that he was experiencing perhaps some symptoms of mental

00:55:50 12 illness earlier than that and encountering problems in

00:55:53 13 school and in life.

00:55:54 14 Now, we've heard perhaps some testimony that

00:55:56 15 he might have had a very difficult upbringing. And

00:56:01 16 that's certainly very concerning. And we're hopeful

00:56:03 17 that if Mr. Giffen were to engage in treatment at the

00:56:06 18 Medical Center at Butner that we could offer treatment

00:56:09 19 both for his mental illness but also perhaps for the

00:56:13 20 trauma that he's undergone as a child and to help him

00:56:17 21 move forward and into building and rebuilding his life.

00:56:21 22 But based on the risk factors and the

00:56:23 23 testimony of Dr. Grover here today, I think there's

00:56:26 24 ample evidence in the record to show that Mr. Giffen's

00:56:28 25 release today would pose a substantial risk of bodily

00:56:33 1 injury to another person or damage to their property.  
00:56:36 2 And, in fact, Mr. Giffen's history shows both of those  
00:56:39 3 things: threatening others/harming others and harming  
00:56:43 4 the property of others.

00:56:46 5 And so based on that evidence, Your Honor,  
00:56:47 6 I'd ask you to commit Mr. Giffen to the custody of the  
00:56:50 7 Attorney General so that he can receive the treatment  
00:56:52 8 that he needs moving forward. Thank you.

00:56:55 9 THE COURT: Thank you, counsel.

00:56:58 10 Mr. Craven, I would like to hear from you in  
00:57:02 11 closing argument, and also to confirm the opportunity  
00:57:07 12 I've accorded Mr. Giffen to speak, if he wishes, to the  
00:57:12 13 Court. What is your suggestion for ordering these  
00:57:18 14 remaining matters? Would you like me to hear you first  
00:57:23 15 or turn my attention now to Mr. Giffen?

00:57:29 16 MR. CRAVEN: Your Honor, in closing argument  
00:57:31 17 I just have a few brief comments. I'm happy to make  
00:57:35 18 those, and then we could let Mr. Giffen have an  
00:57:39 19 opportunity to speak, if that would be acceptable to the  
00:57:43 20 Court.

00:57:43 21 THE COURT: Yes, sir.

00:57:44 22 MR. CRAVEN: Your Honor, despite what Mr.  
00:57:51 23 Giffen may submit to the Court from time to time or what  
00:57:53 24 he may even tell you here today, I really want to help  
00:57:57 25 him. And that's not an easy task, unfortunately, as

00:58:03 1 you heard Dr. Grover testify. I want him to get well  
00:58:09 2 and to get better.

00:58:11 3 And I think the good news is that he does  
00:58:14 4 have this positive history of responding well to  
00:58:18 5 antipsychotic medication.

00:58:21 6 He is suffering from a serious mental  
00:58:24 7 illness that is no fault of his own. And unfortunately  
00:58:30 8 at this point he's sort of his own worst enemy, if you  
00:58:34 9 will.

00:58:36 10 But I really applaud Dr. Grover and others  
00:58:41 11 here at Butner for consistently trying to get Mr. Giffen  
00:58:47 12 to take medication and to get well and to participate in  
00:58:50 13 treatment. There's no reason he has to stay here at  
00:58:54 14 Butner indefinitely. So I am hopeful that something  
00:59:00 15 good will happen in the future. Again, I really want  
00:59:04 16 to help him. It's just not easy, in all candor, at  
00:59:08 17 this point in time. But I hope in the future in his  
00:59:14 18 annual reports that he's making progress. And I would  
00:59:19 19 certainly continue to offer whatever help I can to Mr.  
00:59:26 20 Giffen, and the staff here at Butner for that matter, to  
00:59:29 21 confirm and reiterate everyone's desire that he at least  
00:59:36 22 try some of these opportunities and avenues to getting  
00:59:42 23 well and to getting better.

00:59:45 24 My guess is that he has a lot of good in  
00:59:47 25 him. And unfortunately we just can't see that from the



00:59:52 1 mental illness. But I know that he's smart. He does a  
00:59:56 2 lot of legal research. And I really hope at some point  
01:00:01 3 in the future he can thrive and flourish and sort of  
01:00:06 4 live happily ever after, if you will.

01:00:09 5 Judge, those are all the comments I want to  
01:00:11 6 make at this time. And I'd be happy to slide the  
01:00:15 7 microphone over a little closer to Mr. Giffen.

01:00:17 8 THE COURT: Thank you.

01:00:25 9 THE RESPONDENT: Yes, Your Honor. First, I  
01:00:29 10 wanted to -- my attorney just admitted for the record  
01:00:34 11 that he's not my lawyer. And if I don't have a lawyer,  
01:00:41 12 the Court -- everything is void, absolutely no  
01:00:46 13 jurisdiction if I'm without a lawyer at any critical  
01:00:49 14 stage. It's been like this for 11 months. For  
01:00:53 15 example, when he talks about how I have a mental  
01:00:56 16 illness, that's like he's admitting to everything.

01:01:03 17 He has to believe everything I do. He has  
01:01:06 18 to advocate everything I tell him. And I'm going to  
01:01:10 19 give you the law on it. Okay?

01:01:12 20 So first of all, this may not be perfect,  
01:01:16 21 because I'm being held in a facility that doesn't have  
01:01:20 22 court access. I have no lawyer. I have no law  
01:01:23 23 library. I have no laptop, no cell phone, no legal  
01:01:27 24 phone. And this violates numerous Supreme Court cases.  
01:01:33 25 I'm supposed to be allowed to consult with my lawyer

01:01:36 1 24/7 from the jail. The Supreme Court ruled that over  
01:01:39 2 50 years ago that a judge's order that an attorney and  
01:01:43 3 client could not communicate overnight during a recess  
01:01:46 4 violated due process. The jail is supposed to be  
01:01:50 5 equipped with 24/7 phones and visiting.

01:01:56 6 This jail has visiting only 10:00 a.m. to  
01:01:59 7 3:00 p.m. and requires my lawyer to travel 50 miles from  
01:02:04 8 some other city, and he never comes, and there's no  
01:02:06 9 phones or nothing. There's no email.

01:02:09 10 Under *Tennessee v. Lane*, the Supreme Court  
01:02:11 11 has said the right to be heard -- um, requires the court  
01:02:18 12 to be disability equipped, including having laptops and  
01:02:19 13 internet, all under due process, not just the Americans  
01:02:21 14 with Disabilities Act, but due process.

01:02:24 15 Under the case law of *Sheehan* -- and the  
01:02:28 16 jails have to be equipped as well.

01:02:30 17 But under the case law called *Sheehan*, the  
01:02:33 18 Supreme Court said the Constitution itself now requires  
01:02:36 19 reasonable accommodations. They ruled the Fourth  
01:02:39 20 Amendment in *Sheehan* requires police officers reasonably  
01:02:44 21 accommodate all subjects.

01:02:46 22 THE COURT: Let me interrupt just to let the  
01:02:48 23 court reporter catch up.

01:02:50 24 I believe you referenced a case, *Sheehan*,  
01:02:57 25 S-h-e-e-h-a-n. Is that what you said?

01:03:00 1 THE RESPONDENT: Yes.

01:03:01 2 THE COURT: Thank you. If you could slow  
01:03:04 3 down and speak louder, it would be appreciated.

01:03:15 4 THE RESPONDENT: Yes. I'm speaking as loud  
01:03:18 5 as I can. But I'll try to slow down.

01:03:25 6 So anyway, I'm going to give the Court the  
01:03:28 7 definition of "counsel," according to the U.S. Supreme  
01:03:32 8 Court. So the Supreme Court ruled 120 years ago -- I  
01:03:39 9 don't have the case off the top of my head, because I  
01:03:42 10 don't have a law library. But they ruled that court  
01:03:46 11 officers cannot refuse to represent people the Court  
01:03:55 12 appoints, whether the case is civil or criminal. The  
01:04:01 13 Court has inherent tolerance, even absent a statute, to  
01:04:05 14 require attorneys to submit to the control of basically  
01:04:11 15 an agency relationship. So the Court has power to  
01:04:17 16 appoint.

01:04:19 17 What does the word "appoint" mean? The  
01:04:21 18 word "appoint" means to command the lawyer against his  
01:04:25 19 will. He can't use a constitutional argument such as:  
01:04:30 20 I have the right to liberty or freedom of association to  
01:04:34 21 get out of the Court's command. That's all  
01:04:38 22 "appointment" means.

01:04:39 23 This was discussed by the Supreme Court in a  
01:04:45 24 28 U.S.C., 1915 interpretation, a statute of the word  
01:04:50 25 "request." What does the word "request counsel" mean?

01:04:55 1 And they looked at the word "appointment" and "request"  
01:04:59 2 and decided "appointment" meant to command; "request"  
01:05:03 3 meant that -- only to ask the lawyer to represent a  
01:05:08 4 person.

01:05:09 5 And in this -- now, the next phase of  
01:05:16 6 establishing the attorney-client relationship, although  
01:05:21 7 the Court can command a lawyer to represent a person,  
01:05:24 8 the Court cannot require an accused or principal to  
01:05:28 9 accept the lawyer because he has a fundamental right to  
01:05:33 10 contract, to freedom of association, to speech, even to  
01:05:40 11 set an objective and make a complete defense. And this  
01:05:46 12 requires the government have a compelling reason to  
01:05:52 13 force any citizen to work with any lawyer.

01:05:54 14 So the Supreme Court addressed this in  
01:06:00 15 *Faretta v. California*, that the accused or the defendant  
01:06:04 16 must acquiesce to take any lawyer. And if you open up  
01:06:11 17 *Faretta*, it's a criminal case, but it actually applies  
01:06:14 18 to all cases of attorney representation because it's  
01:06:21 19 based on the holding that mentions the word "acquiesce,"  
01:06:24 20 and it's going to -- the first cite is an agency law  
01:06:29 21 case. The Supreme Court states that in this agency law  
01:06:34 22 case, citizens are bound by the acts of their counsel.

01:06:39 23 And so this leads me to this other right  
01:06:45 24 mentioned in *Faretta*. They do state that all statutory  
01:06:49 25 and constitutional powers belong to the defendant or

01:06:53 1 accused personally, such as the compulsory process  
01:06:57 2 clause or, in the case of 4247, there's a subpoena  
01:07:03 3 right, a right to be present, and so on. These rights  
01:07:07 4 belong to me personally. And there's other rights  
01:07:11 5 mentioned. It states that I have the right to be  
01:07:15 6 present in court physically for face-to-face  
01:07:20 7 confrontation of any testifying witness. I also have  
01:07:24 8 the right to hear everything said by a judge or other  
01:07:28 9 person. And this is because the Supreme Court says I  
01:07:32 10 have the right to supersede my lawyer at any time and  
01:07:36 11 conduct all or part of the defense and even to give my  
01:07:41 12 attorney suggestions and orders on what to do in court  
01:07:45 13 in real time.

01:07:48 14 Now, the rest of agency law, this one --  
01:07:54 15 I've got a cite on this one. It's called -- you have  
01:07:56 16 to look up what is the actual definition of "agency law"  
01:08:00 17 that they're talking about. And there's a case called  
01:08:03 18 *Henderson*, spelled H-e-n-d-e-r-s-o-n, v., like Victor,  
01:08:11 19 then it's called *United States* -- no, sorry, *United*  
01:08:15 20 *Student Aid Funds, Inc.*, and then it's 918 F.3d 1068.  
01:08:30 21 And agency law requires me, the principal, to accept an  
01:08:39 22 agent. That's the first step. I have to ratify a  
01:08:44 23 contract with the agent for him to be my lawyer. And  
01:08:49 24 the second part is the lawyer, the agent, he has to  
01:08:53 25 agree to my control. He has to do everything I say,

01:08:57 1 because he's just an agent using my power. The right  
01:09:02 2 of summation and to make closing arguments, those are my  
01:09:05 3 powers. My agent is allowed to speak on my behalf.

01:09:09 4 Now, this *Henderson* cases also states that  
01:09:12 5 the minimum requirement to establish an agency  
01:09:17 6 relationship are called willful ignorance. That's  
01:09:25 7 where the lawyer constantly, at a minimum, tells me:  
01:09:28 8 Hey, I'm here to represent you and be your agent; and  
01:09:31 9 then I do not object. And that's kind of like me  
01:09:33 10 passively -- it's where I passively accept him as my  
01:09:37 11 lawyer and representative. He is then allowed to use  
01:09:41 12 my powers and argue on my behalf in court. But he had  
01:09:45 13 to first give me the opportunity to object and make a  
01:09:48 14 contract with him.

01:09:50 15 Now, there's a second -- now, there's a  
01:09:53 16 bunch of other cases on this. One is called *Washington*  
01:09:57 17 *v. Strickland*. You have to be careful not to mix up  
01:10:02 18 effective assistance of counsel cases with these agency  
01:10:06 19 law cases. But this is an effective assistance of  
01:10:12 20 counsel case, but it does mention some of the duties of  
01:10:17 21 an agent in the agency law context. They state the  
01:10:23 22 lawyer has a minimum duty of complete loyalty to his  
01:10:28 23 client.

01:10:28 24 Now, the word "loyalty" has been interpreted  
01:10:30 25 in a whole slew of cases to mean that all you have to do

01:10:34 1 is look at the lawyer's statements to find out if he's  
01:10:38 2 truly loyal to his client. For example, one lawyer who  
01:10:41 3 was not loyal mentioned in a press release to the news  
01:10:45 4 that his client was not amenable to treatment and  
01:10:49 5 therefore should receive the death penalty. So that  
01:10:53 6 was evidence his lawyer was never loyal and thus broke  
01:10:58 7 the agency relationship.

01:10:59 8 By the way, there are federal rules of  
01:11:02 9 agency besides just acceptance, control, and different  
01:11:06 10 things. One of those things is he has to disclose  
01:11:09 11 adverse interest for there to be an agency relationship;  
01:11:12 12 and he must agree to loyalty, care, and obedience.  
01:11:17 13 That's a Ninth Circuit case called *Towery*, T-o-w-e-r-y,  
01:11:27 14 v., like Victor, *Ryan*, R-y-a-n.

01:11:31 15 And other loyalty cases they had a lawyer  
01:11:35 16 who, in closing argument -- and my lawyer just did  
01:11:38 17 this -- in closing argument he tried to distance himself  
01:11:43 18 from his own client and said: I don't agree with doing  
01:11:46 19 the defense my client wants, and I don't agree with  
01:11:49 20 anything about my client; I think he should be put in a  
01:11:52 21 mental hospital on drugs. That's what my lawyer just  
01:11:55 22 said.

01:11:57 23 So other cases where loyalty was questioned.  
01:11:59 24 The Ninth Circuit had a case called *Frazier*,  
01:12:03 25 F-r-a-z-i-e-r, I think. And the lawyer told his

01:12:07 1 client: You're a nigger, and I'm going to be  
01:12:10 2 ineffective on purpose. What's the difference between  
01:12:13 3 calling me mentally ill or a nigger? There is no  
01:12:18 4 difference. That's disloyalty.

01:12:21 5 Now, there's a Supreme Court case on  
01:12:24 6 loyalty, *Nix v. Whiteside*. The client had given his  
01:12:30 7 attorney an order that the objective of the defense was  
01:12:36 8 to do perjury. He wanted to present a lie to the Court  
01:12:41 9 to get out of criminal charges. The Supreme Court said  
01:12:44 10 that is the only time you're allowed to disobey your  
01:12:48 11 client. They did mention in the case that perjury is  
01:12:58 12 fraud on the Court, and the attorney should not present  
01:13:01 13 fraud on the Court or perjury. But they did say in the  
01:13:04 14 case the attorney must otherwise do everything he's told  
01:13:07 15 and must believe everything he's told. He has to  
01:13:11 16 believe it and speak it, whether he wants to or not.  
01:13:14 17 That's part of the control of his client or his  
01:13:20 18 principal. He is only here to tell you what I tell him  
01:13:22 19 to do under agency law.

01:13:27 20 There is another case, *Brookhart v. Janis*,  
01:13:30 21 which I mentioned before. That is actually an agency  
01:13:33 22 law case as well. That one involved an attorney doing  
01:13:37 23 what my attorney is doing now, where he's refused to go  
01:13:42 24 to my defense or speak anything that I told him to  
01:13:44 25 speak. The first thing he told me -- I tried to write



01:13:48 1 a letter to the Court about a month ago. It was  
01:13:51 2 stolen. The Bureau of Prisons has been stealing all my  
01:13:54 3 mail. Somebody has, either the Court or this prison.  
01:13:58 4 And they're coordinating with Joseph Craven to do it,  
01:14:02 5 because he told me in July 2012, the only time he  
01:14:07 6 visited me, that: You don't control me. Oh, yeah?  
01:14:13 7 That's exactly what I do. I control my lawyer.  
01:14:16 8 That's what my powers are as principal.

01:14:20 9 So *Brookhart v. Janis*, the attorney merely  
01:14:24 10 said: Your Honor, I have no questions of any of the  
01:14:27 11 witnesses, and I have no evidence to present.

01:14:32 12 And then the judge said: This has the  
01:14:34 13 effect of you automatically have to be found guilty.

01:14:40 14 And that's when the accused objected on the  
01:14:42 15 record. He said: Your Honor, I'm not pleading guilty.

01:14:47 16 And that has the effect of revoking the  
01:14:51 17 attorney's agency to do what he was doing, according to  
01:14:55 18 the Supreme Court.

01:14:57 19 THE COURT: Mr. Giffen, may I ask you a  
01:15:01 20 question?

01:15:05 21 What do you want to happen to yourself going  
01:15:09 22 forward?

01:15:19 23 THE RESPONDENT: Well, I have things to tell  
01:15:26 24 you that will explain to you what I want you to do  
01:15:28 25 today, because I have -- I'm forced to represent myself

01:15:31 1 today. And so I have all the legal arguments. I've  
01:15:35 2 got a few things to point out to you.

01:15:37 3 And I believe what's supposed to happen when  
01:15:39 4 it's done, if you follow the law, I will probably be  
01:15:44 5 released today. And I have all the case law from the  
01:15:50 6 Supreme Court. I've got, like, over 50 case laws.

01:15:56 7 THE COURT: Where would you go, sir, if you  
01:15:57 8 were released today?

01:16:01 9 THE RESPONDENT: Okay. Well, part of my  
01:16:02 10 motion here, my belief is if released today -- and I  
01:16:09 11 hope I get to tell you the rest of all this stuff here,  
01:16:12 12 because some of this, it's going to blow your mind how  
01:16:15 13 many illegal things are happening here right now.

01:16:18 14 Just, for example -- and I didn't tell you  
01:16:22 15 the rest of what I have to say. I've got a Supreme  
01:16:25 16 Court case where they already ruled mental patients  
01:16:28 17 cannot be held in the Bureau of Prisons because  
01:16:31 18 conditions are too harsh. And I'm going to give you  
01:16:35 19 the case to explain it all. So that right there says  
01:16:38 20 I've got to be released anyway.

01:16:40 21 But if I was to be released today, here's  
01:16:43 22 what I have. I believe you should order the Attorney  
01:16:47 23 General and the Bureau of Prisons under *DeShaney v.*  
01:16:54 24 *Winnebago* to give me about \$10,000 to provide for my  
01:17:02 25 shelter, food, transportation, and safety and medical

01:17:04 1 care. And I would immediately go to a hotel to stay in  
01:17:09 2 the hotel and get myself arranged and situated, and go  
01:17:13 3 to a doctor. I'm going to go to the emergency room.  
01:17:16 4 And I'll tell you why. I have a serious injury right  
01:17:18 5 now. I've got a flesh-eating infection on my penis,  
01:17:23 6 and it's on my breast; it's in my nose; it's in my ears;  
01:17:27 7 it's in my bellybutton. And there's a nurse that --  
01:17:30 8 the doctors are refusing to treat it because they refuse  
01:17:34 9 to come to my room; Dr. Novo [phonetically] and another  
01:17:40 10 doctor, K.L. And the nurse just told me: Your  
01:17:42 11 condition will not improve if those doctors don't come  
01:17:45 12 down here. And she's written, like, 20 emails to them.  
01:17:49 13 That's corporal punishment. And, by the way, if you're  
01:17:54 14 corporally punished in a mental hospital, the penalty is  
01:17:58 15 automatic release from the commitment. And I'll give  
01:18:01 16 you all the case law on that.

01:18:03 17 THE COURT: Let me ask another question,  
01:18:07 18 where I have heard that earlier pharmaceutical  
01:18:16 19 treatments brought great benefits and improvements to  
01:18:28 20 you. What is your perspective on earlier  
01:18:31 21 pharmaceutical treatment and whether you would be  
01:18:35 22 willing to engage going forward in pharmaceutical  
01:18:43 23 treatment?

01:18:47 24 THE RESPONDENT: Let me just tell you the  
01:18:53 25 reason I cited *DeShaney v. Winnebago*. Both the Ninth

01:18:54 1 Circuit and Second Circuit have ruled jails must provide  
01:18:57 2 90-day supplies of medication to inmates they discharge.  
01:19:01 3 And I don't see the difference between medication and  
01:19:04 4 shelter and money and food.

01:19:07 5 But now onto your new question. This  
01:19:12 6 question -- first, I want to let you know, because I  
01:19:16 7 don't have counsel at this proceeding, and I haven't  
01:19:20 8 since the initial appearance, and that was held ex  
01:19:24 9 parte, you're not allowed to issue detention orders ex  
01:19:28 10 parte. I'm going to give you a lot of case law.

01:19:32 11 THE COURT: I want to know -- sir, I don't  
01:19:35 12 want to know about case law in answer to this question.  
01:19:39 13 Did you feel that you got better when you took medicine?  
01:19:43 14 And would you be willing to take medicine going forward?

01:19:49 15 THE RESPONDENT: Well, here's the thing.  
01:19:52 16 I'm just stating this for the record, because *Garza v.*  
01:19:57 17 *Idaho* says if a proceeding is scheduled or a person is  
01:20:01 18 without counsel, any later commitments are void. So  
01:20:05 19 this is all illegal.

01:20:07 20 But I'll answer the question anyway, because  
01:20:09 21 I think we're getting into an area where I can't answer  
01:20:12 22 questions about medication because there is no civil  
01:20:14 23 commitment coming. You have no jurisdiction.

01:20:17 24 But the thing about medication -- let me go  
01:20:20 25 ahead and give you a long explanation of who I am.

01:20:24 1 First of all, I fully object to Dr. Grover speaking.  
01:20:30 2 And I will give you -- basically, there's several things  
01:20:34 3 wrong. I have requested a *Daubert* hearing because I  
01:20:37 4 have the right to contest that she's even using  
01:20:40 5 scientific methods before she can testify. But my  
01:20:44 6 motion was stolen by somebody every time I mail it to  
01:20:47 7 the Court. I object to everything she's saying.

01:20:50 8 And on another basis, none of what she's  
01:20:52 9 saying was verified by a jury. There's security video  
01:20:59 10 and witnesses to contradict all of that stuff. So I'm  
01:21:02 11 saying that everything she's saying is false.

01:21:04 12 But here's what -- because you're asking me  
01:21:05 13 a question that requires a complete defense, including  
01:21:10 14 my psychiatrist be called. I've got a psychiatrist  
01:21:14 15 already. I've got over six or seven psychiatrists, and  
01:21:18 16 I'm friends with another ten of them. And my attorney  
01:21:20 17 refuses for them to be present. So to contest this  
01:21:25 18 issue of meds, to give a full statement on it, I can't  
01:21:31 19 even do it because I have no lawyer. I have no experts  
01:21:34 20 here.

01:21:35 21 But just for -- to kind of please you, my  
01:21:42 22 knowledge on medication, I'm going to give you the  
01:21:47 23 United Nations' opinion on this, as well as my own, and  
01:21:50 24 a lot of details of a scientific nature. The United  
01:22:01 25 Nations has actually -- the Special Rapporteur on

01:22:01 1 Torture in 2013, has asked the United States to stop  
01:22:02 2 using medications because they are not a treatment.  
01:22:06 3 The Special Rapporteur on Health in 2017 has asked the  
01:22:11 4 United States to modernize its health care system and  
01:22:13 5 eliminate medication because they don't work on mental  
01:22:16 6 illness. So the United Nations has spoken.

01:22:21 7 Dr. Grover has committed a fraud on the  
01:22:24 8 Court trying to cover her tracks because she uses drugs  
01:22:27 9 to assault people and damage their brains and bodily  
01:22:30 10 organs. That's what the United Nations concluded, two  
01:22:36 11 different Special Rapporteurs.

01:22:36 12 The international criminal court potentially  
01:22:38 13 has Dr. Grover put into prison for 25 years or more.  
01:22:43 14 She's killed many mental patients. She's mutilated and  
01:22:48 15 scrambled their brains. Psychiatry is seen as torture  
01:22:52 16 by scientists.

01:22:54 17 Here's the medical facts on antipsychotic  
01:22:56 18 drugs. There's been only one 20-year trial of the  
01:23:01 19 drugs ever done. It's called the Sotier [phonetically]  
01:23:05 20 House Study. It's on psychrights.org. Jim Gottstein  
01:23:12 21 is the author of that website. He's a lawyer in  
01:23:14 22 Alaska, and he's my personal friend. See, I could have  
01:23:15 23 him here to testify today. I don't have a lawyer. I  
01:23:18 24 couldn't even contact Jim Gottstein. Jim Gottstein has  
01:23:24 25 already been talking to all my other lawyers. He

01:23:25 1 witnessed my former lawyer abusing me; that's Lisa  
01:23:31 2 Ludwig. He wrote to Lisa and said: You appear to be  
01:23:33 3 running Todd through the motions without trying to win  
01:23:37 4 Todd's case. That's a *Brookhart v. Janis* violation.

01:23:42 5           Anyway, Jim Gottstein's website has on it  
01:23:47 6 scientific data. The Sotier House study studied three  
01:23:49 7 groups of mental patients on antipsychotic drugs. The  
01:23:52 8 first group was given no antipsychotic drugs, and they  
01:23:57 9 have the highest levels of schizophrenia, the worst  
01:24:02 10 delusions. And they gave them a non-drug treatment  
01:24:05 11 regimen and found 80 percent of them recovered from  
01:24:08 12 their illness with no medications within 20 years.

01:24:14 13           Then the second group was given  
01:24:16 14 antipsychotic drugs for two years. They found that the  
01:24:20 15 drugs prevented the recovery of their psychotic symptoms  
01:24:26 16 entirely. 80 percent of the users of antipsychotic  
01:24:30 17 drugs were relapsing with chronic voices and illnesses  
01:24:35 18 induced by the drugs.

01:24:39 19           After two years they took those  
01:24:40 20 schizophrenics off the drugs, and their recovery rate  
01:24:45 21 was lower than the group that never received drugs at  
01:24:49 22 all. They started to recover from their schizophrenia  
01:24:54 23 though, but only at a rate of 40 percent instead of 80  
01:24:58 24 percent within 20 years.

01:25:01 25           Then there's a third group. The third

01:25:03 1 group was given antipsychotics for 20 years. Their  
01:25:07 2 recovery rate was only 5 percent. That means 95  
01:25:11 3 percent of the time they were relapsing and having  
01:25:14 4 chronic symptoms of mental illness solely because they  
01:25:20 5 were on antipsychotic drugs.

01:25:23 6 Now, the second piece of data to give you is  
01:25:26 7 the death rate. I have a psychologist who would like  
01:25:30 8 to be here today to explain this to you, but I don't  
01:25:32 9 have a lawyer. His name is Dr. Toby Watson. He's a  
01:25:37 10 Ph.D. I think he lives in Missouri or -- anyway, on  
01:25:43 11 his website, look up DrTobyWatson.com. He has an  
01:25:48 12 affidavit. So some of this information is free. It's  
01:25:51 13 the death rate from antipsychotic drugs. If you take  
01:25:55 14 one antipsychotic drug, you will die 37 percent of the  
01:26:00 15 time within 17 years. If you take two antipsychotic  
01:26:05 16 drugs -- actually, you only have to switch your  
01:26:08 17 antipsychotic drug. So if they start you on Seroquel,  
01:26:13 18 and then they switch you to Abilify at any point in your  
01:26:17 19 treatment, you will die 48 percent of the time. If  
01:26:21 20 they switch your antipsychotic a third time, say from  
01:26:25 21 Abilify to Zyprexa, you will die 58 percent -- or 57  
01:26:31 22 percent of the time. So they found there's a  
01:26:34 23 correlation between the psychiatric drugs you take and  
01:26:37 24 your death rate. And they say it's because the  
01:26:41 25 drugs -- all it does -- it's never been linked to



01:26:46 1 treating a mental illness.

01:26:48 2 If you go back to MK-Ultra, they studied the  
01:26:52 3 major tranquilizers -- that's what they were called that  
01:26:55 4 day -- and minor tranquilizers, and energizers, and they  
01:27:00 5 found that you can actually only do one thing:  
01:27:02 6 chemically lobotomize the brain. That includes erasing  
01:27:07 7 the personality.

01:27:10 8 There's a study by Dr. Ewen Cameron. He  
01:27:15 9 was a CIA agent, and he used mental patients as guinea  
01:27:19 10 pigs at his memorial hospital in Canada. He was also  
01:27:23 11 the head of the APA and the World Psychiatric  
01:27:26 12 Association. He also co-authored DSM-I. Dr. Ewen  
01:27:33 13 Cameron used drugs like Thorazine to cause you to go  
01:27:38 14 unconscious for months at a time. He would administer  
01:27:41 15 five different neuroleptic drugs -- they're also called  
01:27:47 16 neuroleptic -- and you would never be awake. During  
01:27:50 17 that period of time he would give you ECT, and your  
01:27:54 18 personality would erase. And he found that he could  
01:27:58 19 reprogram you with the new personality using a loop tape  
01:28:05 20 recorder. So he would tell you -- basically the  
01:28:06 21 problem would be you couldn't remember yourself once he  
01:28:09 22 was done with these antipsychotic drugs and the ECT.  
01:28:15 23 And whatever he told you would be all that you would  
01:28:19 24 know. If he said your name was Sarah, you would think  
01:28:21 25 your name was Sarah. You would still remember English;

01:28:25 1 you could still count. But you couldn't tell who you  
01:28:31 2 were unless someone told you. That's what these drugs  
01:28:36 3 are used for.

01:28:37 4 I've also seen the doctors use them to  
01:28:40 5 induce confessions and pleas in court. For example,  
01:28:44 6 there's a man named Daniel Butts in Oregon. For three  
01:28:49 7 years he was at the Oregon State Hospital unable to aid  
01:28:52 8 and assist. He was incompetent to stand trial. The  
01:28:57 9 doctor refused to admit him claiming he was malingering  
01:29:02 10 because he did fine at the hospital without meds. He  
01:29:05 11 would play basketball. But as soon as he went back to  
01:29:08 12 jail, he would start trying to kill himself in his cell  
01:29:12 13 and refused to come out. Well, they went ahead and  
01:29:16 14 gave him Risperdal by force, and it damaged his ability  
01:29:21 15 to control his will anymore. And they were able to  
01:29:25 16 force him to plead guilty.

01:29:27 17 They're using it as a mind control drug to  
01:29:31 18 force inmates to plead guilty. That's all they're  
01:29:34 19 doing with it. There are effective street drugs, like  
01:29:39 20 the street drug dragon's breath [sic]. You can tell a  
01:29:43 21 person to draw money from their bank account, and they  
01:29:48 22 will and give it to you when they take dragon's breath.  
01:29:51 23 So the doctors are trying to damage the brain to make  
01:29:54 24 the person more manipulable.

01:29:56 25 Other scientific data on psychrights.org,

01:29:59 1 they studied whether these drugs helped with violence;  
01:30:02 2 and the study says: No, they don't.

01:30:05 3 They set up a mental hospital with no drugs  
01:30:09 4 inside of it and gave them alternative treatments  
01:30:13 5 instead. And to read this study, you're going to look  
01:30:17 6 for the Dr. Gotzsche affidavit on psychrights.org; it  
01:30:22 7 says Dr. Gotzsche -- Dr. Peter Gotzsche. He is a  
01:30:27 8 former AstraZeneca CFO, chief financial officer. And  
01:30:33 9 he's a psychiatrist, and he came out as a whistleblower,  
01:30:36 10 and he said: These drugs don't treat mental illness.  
01:30:40 11 And in his affidavit he compiled this study that said:  
01:30:43 12 If you put mental patients in a mental hospital on  
01:30:47 13 alternative treatments, they will have no episodes of  
01:30:51 14 suicide or assault.

01:30:55 15 Then they set up a second mental hospital,  
01:30:58 16 and they gave the drugs there. And they had multiple  
01:31:01 17 incidents of assault and suicide, proving the drugs are  
01:31:05 18 causing behavioral disorders. The psychiatrists claim  
01:31:09 19 these drugs are used to treat danger, but it's not true.  
01:31:11 20 There's never been a single study or evidence to back it  
01:31:14 21 up.

01:31:20 22 MR. CRAVEN: You need to pause for a moment  
01:31:23 23 and let the court reporter catch up.

01:31:26 24 THE COURT: Let's take a pause and let the  
01:31:30 25 court reporter rest her wrists.

01:32:54 1 Thank you very much. I'd like to make some  
01:32:58 2 findings on the record that I do have jurisdiction. I  
01:33:02 3 find as a fact that Mr. Craven is the respondent's  
01:33:07 4 lawyer.

01:33:08 5 I focus on Fourth Circuit law when I  
01:33:14 6 conclude, and in contradiction to what the defendant  
01:33:18 7 here urges, that Mr. Craven does not, nor would any  
01:33:26 8 lawyer for Mr. Giffen, have to advocate everything that  
01:33:35 9 Mr. Giffen told the lawyer to do.

01:33:41 10 I conclude that Mr. Giffen does not, as he  
01:33:44 11 announced earlier, have a right to supersede his lawyer  
01:33:51 12 at any time. I focus in making these conclusions upon  
01:33:59 13 well established Fourth Circuit law. A defendant or  
01:34:07 14 respondent is not entitled to direct all aspects of his  
01:34:13 15 or her case. Certain decisions that primarily involve  
01:34:22 16 strategy, legal strategy, legal tactics, such as what  
01:34:30 17 evidence should be introduced, whether stipulations  
01:34:37 18 should be entered into, whether objections should be  
01:34:42 19 raised, and what motions should be filed may be made by  
01:34:52 20 the attorney without the client's consent under  
01:34:59 21 circumstances present today.

01:35:06 22 Disagreement with strategy/disagreement with  
01:35:10 23 tactics doesn't mean, Mr. Giffen, that you don't have a  
01:35:18 24 lawyer, because you do. You have a very able and  
01:35:25 25 experienced lawyer. And I join in the focus that he

01:35:35 1 places on you getting better. I share that too. And  
01:35:41 2 I am encouraged about your prior response to earlier  
01:35:51 3 pharmaceutical treatments. And I share the goal, as I  
01:35:59 4 know the petitioner does as well, that you not spend the  
01:36:04 5 rest of your life at Butner. But today is not the day  
01:36:12 6 for you to leave Butner.

01:36:20 7 I find that the petitioner has established  
01:36:25 8 by clear and convincing evidence that Mr. Giffen  
01:36:30 9 presently suffers from schizophrenia, and schizophrenia  
01:36:36 10 qualifies as a mental disease or defect under Section  
01:36:43 11 4246 of Title 18. And the petitioner has established  
01:36:51 12 by clear and convincing evidence that as a result, if I  
01:36:56 13 were to release you today, that would create a  
01:37:00 14 substantial risk, sir. And I know you disagree with  
01:37:04 15 this, but I conclude it would create a substantial risk  
01:37:12 16 of bodily injury to others and/or serious damage to  
01:37:19 17 property.

01:37:23 18 I think the opinion of Dr. Grover is  
01:37:27 19 plausible; it's well reasoned, and it's supported by the  
01:37:32 20 record. And so I do adopt that report and her  
01:37:38 21 testimony. It supports my finding here today, my  
01:37:49 22 finding, sir, that you do meet the criteria for civil  
01:37:53 23 commitment, based also on Dr. Stelmach's opinions.

01:38:05 24 Suitable arrangements for state custody and  
01:38:08 25 care unfortunately presently are not available. So I

01:38:15 1 must order you committed to the Attorney General's  
01:38:18 2 custody under Section 4246(d) until such time as  
01:38:28 3 appropriate, such time as the appropriate state will  
01:38:32 4 assume responsibility, sir, for your care, custody, and  
01:38:36 5 treatment, or until, as we all hope, your mental  
01:38:42 6 condition is improved to such an extent that you're able  
01:38:47 7 to leave and be safe in your community.

01:38:56 8 Now, while I'm ordering you committed, Mr.  
01:38:59 9 Giffen, I want to remind you that you've got several  
01:39:03 10 avenues for obtaining discharge in the future. Your  
01:39:10 11 counsel may petition the Court for your release, or the  
01:39:15 12 government may file a certificate of improved mental  
01:39:20 13 condition.

01:39:25 14 Mr. Giffen, you're going to have to work  
01:39:28 15 hard. And as a part of that work, sir, keep an open  
01:39:33 16 mind. You have a mind that's very vast and able to  
01:39:49 17 recall, able to interpret as you may wish what you  
01:39:52 18 understand to be true. I am asking you, sir, to keep  
01:39:59 19 an open mind as to what others in the medical profession  
01:40:08 20 would urge you to do.

01:40:15 21 Please comply with your treatment plan.  
01:40:19 22 Please go to those groups. Please work on developing  
01:40:25 23 strategy. As much work as you've put into your  
01:40:31 24 understanding of agency law, as it may or may not relate  
01:40:37 25 to you and your attorney's relationship -- because I

01:40:41 1 must assure you that time has not been well spent -- but  
01:40:47 2 put as much time into developing coping strategies to  
01:40:52 3 address your mental health symptoms, and I have no doubt  
01:40:56 4 that you can't be successful.

01:41:04 5 THE RESPONDENT: Your Honor --

01:41:04 6 THE COURT: So these are my findings and my  
01:41:06 7 conclusion.

01:41:09 8 THE RESPONDENT: Can I please state one  
01:41:11 9 small little thing for the record?

01:41:13 10 THE COURT: Yes, sir.

01:41:13 11 THE RESPONDENT: Okay. I'm so glad you  
01:41:17 12 agreed to let me speak.

01:41:19 13 Now, here's what I can do to help you  
01:41:23 14 understand the law a little better. And I'm not  
01:41:26 15 insulting you, so just let me speak. I have to tell you  
01:41:31 16 something.

01:41:31 17 You can look this up yourself, and you're  
01:41:34 18 going to be able to know that what you're saying is  
01:41:37 19 wrong. So you're quoting some text about motions and  
01:41:41 20 arguments that can be made. That comes out of *McCoy v.*  
01:41:49 21 *Louisiana*. And I needed to let you know and clarify how  
01:41:51 22 that case is to be read.

01:41:53 23 The Supreme Court actually -- I have here  
01:41:57 24 in my motion some stuff about that. But I'm going to  
01:41:59 25 explain it to you. The Supreme Court has actually

01:42:04 1 never said a lawyer could act over his client's  
01:42:07 2 objection. What they're doing is they're incorporating  
01:42:11 3 the American Bar Association rules. And there's two  
01:42:14 4 rules which is co-agency law. You have to read the  
01:42:18 5 context of the quotation from the Supreme Court opinion  
01:42:23 6 in the context of what they're being told. They're  
01:42:27 7 pulling these quotes out of the American Bar Association  
01:42:30 8 rules. Here are the two rules in the American Bar  
01:42:32 9 Association rules they're quoting. The first rule is  
01:42:35 10 the most important one. It says: The attorney must  
01:42:39 11 abide by all objectives of the defense. And then the  
01:42:43 12 second rule, that's the rule where it says an attorney  
01:42:47 13 may make -- decide what arguments and objections to  
01:42:51 14 make, and so on. There's an asterisk. You've got to  
01:42:56 15 read the asterisk. It says, "Other restriction above."  
01:43:01 16 It says the attorney must abide by all objectives of the  
01:43:06 17 defense. The attorney may decide what witnesses to  
01:43:08 18 call and objections to make and arguments to advance.  
01:43:13 19 This is simply encoding agency law, which says if  
01:43:18 20 there's an objective made, the attorney has to submit to  
01:43:21 21 the principal's control.

01:43:24 22 And then, because agency laws allows an  
01:43:28 23 attorney to act without the principal's consent if  
01:43:32 24 there's willful ignorance, the attorney is not unethical  
01:43:36 25 if he's making motions and objections in court, as long



01:43:39 1 as willful ignorance is present. That's all in the  
01:43:44 2 American Bar Association rules.

01:43:45 3 Even the Supreme Court states in *McCoy v.*  
01:43:50 4 *Louisiana* that the attorney must at least meet with the  
01:43:54 5 client and discuss their trial strategy first before  
01:43:58 6 doing any work on the case, before filing any motion, to  
01:44:02 7 give the client the opportunity to object and create a  
01:44:06 8 new trial strategy. That is all in *McCoy v. Louisiana*.  
01:44:12 9 In fact, the Court -- Justice Scalia is saying if the  
01:44:17 10 client objects, that revokes the counsel's agency. You  
01:44:20 11 have to carefully read the American Bar Association  
01:44:24 12 rules and the agency law.

01:44:29 13 The Supreme Court also stated -- there's a  
01:44:31 14 case called *Gonzales*. All that they said in *Gonzales*,  
01:44:37 15 that an attorney could decide -- consent to jurisdiction  
01:44:43 16 by a magistrate, but they said at the bottom: Only  
01:44:46 17 because the defendant never made an objection to his  
01:44:49 18 lawyer or to the Court in a letter. This was all  
01:44:53 19 raised on appeal. And then Justice Scalia is quoted in  
01:44:59 20 the concurring opinion, and he said: Keep in mind we're  
01:45:03 21 only deciding the attorney can choose a magistrate judge  
01:45:08 22 because there was no objection. If there had been an  
01:45:12 23 objection, that would revoke the agency of the lawyer to  
01:45:16 24 decide anything, whether to consent to a continuance, to  
01:45:21 25 select an expert, to file a motion, or to consent to a

01:45:25 1 magistrate. And that text of Scalia is directly quoted  
01:45:31 2 in the body of *McCoy v. Louisiana*. So you have to use  
01:45:35 3 the definition of that quote from *Gonzales*. My  
01:45:40 4 attorney is not allowed to do anything over my  
01:45:42 5 objection.

01:45:43 6 THE COURT: Okay. Mr. Giffen, let's let the  
01:45:49 7 court reporter rest her wrists. It's so important that  
01:45:52 8 she be able to.

01:45:55 9 THE RESPONDENT: I've only got one more  
01:45:57 10 thing to tell you.

01:45:57 11 THE COURT: I'm going to call a pause for a  
01:46:00 12 moment and let her rest her wrists.

01:46:00 13 THE RESPONDENT: Okay.

01:46:22 14 THE COURT: All right. You said one more  
01:46:23 15 thing you had to tell me?

01:46:27 16 THE RESPONDENT: Okay. First of all, I need  
01:46:29 17 you to order my lawyer to take this motion and file it  
01:46:32 18 in court because it has most of my arguments on it.  
01:46:37 19 But it doesn't have one thing on it that I need to tell  
01:46:41 20 you in person. Because what's been happening is when I  
01:46:45 21 mail something to the courthouse from my jail cell, it's  
01:46:49 22 stolen. I've got a list of things I mailed to you.  
01:46:53 23 None of it has gotten to the courthouse.

01:47:01 24 So here's what I need to tell you. I  
01:47:04 25 wanted to point out that the U.S. Supreme Court --

01:47:07 1 because I couldn't write this; I've got so limited paper  
01:47:10 2 and pen, I couldn't write this in there. The U.S.  
01:47:13 3 Supreme Court has recently ruled that Article III judges  
01:47:19 4 lack authority to hear civil commitment cases. And I'm  
01:47:23 5 going to give you all the case laws on this. Because  
01:47:25 6 they decided that only juries can revoke a person's  
01:47:29 7 liberty. All right. Here's the cases. It's just  
01:47:34 8 U.S. Supreme Court docket . And there's a history.  
01:47:37 9 The Supreme Court has ruled it over a dozen times in the  
01:47:40 10 past. But for a period of the 70's, it was followed.  
01:47:45 11 But it's been recently -- they had a vote on it  
01:47:48 12 recently. All right. So here are the cases I want  
01:47:50 13 you to have. First of all, the definition of bill of  
01:47:57 14 attainder, it used to be that you could not revoke a  
01:48:00 15 fundamental right such as the right to liberty or to  
01:48:03 16 practice an occupation without a jury trial and a charge  
01:48:09 17 tried before a tribunal, a criminal charge. There's  
01:48:13 18 all these bill of attainder cases on this in the 1800s.  
01:48:17 19 So here's the case law. It's called Re:  
01:48:19 20 Oliver, R-e: O-l-i-v-e-r. In that case the Supreme  
01:48:27 21 Court states it's a rule -- it is law that no man's  
01:48:33 22 life, liberty, or property shall be forfeited without a  
01:48:37 23 charge tried fairly before a tribunal.  
01:48:41 24 The second case: *United States v. Brown*.  
01:48:46 25 This is 1950. The Supreme Court ruled that any

01:48:53 1 preventive measures the state wants to use such as  
01:49:00 2 forestall danger to the community by dangerously  
01:49:02 3 mentally ill people is a bill of attainder because  
01:49:06 4 prevention is, in fact, deterrence. And the bill of  
01:49:11 5 attainder clause and due process clause banned  
01:49:14 6 deterrence and retribution without a criminal jury  
01:49:17 7 trial.

01:49:18 8 Now, the Supreme Court has applied it to a  
01:49:22 9 civil commitment case already; it's *Specht v. Patterson*,  
01:49:31 10 S-p-e-c-h-t v., like Victor, Patterson,  
01:49:36 11 P-a-t-t-e-r-s-o-n. The Supreme Court ruled the civil  
01:49:38 12 commitment statute was, in fact, criminal, and the  
01:49:40 13 person had to have a jury trial, and that -- that was  
01:49:44 14 the one to read. They cited *United States v. Brown* and  
01:49:49 15 state: The desire to prevent dangerously mentally ill  
01:49:53 16 people and sexual psychopaths from injuring the  
01:49:56 17 community requires a criminal trial and it's, in fact,  
01:49:59 18 punishment.

01:50:00 19 The next case on this is *Humphrey v. Cady*.  
01:50:04 20 *Humphrey v. Cady* stated in it that you can, in fact,  
01:50:08 21 enforce through habeas corpus either *Baxstrom v. Herold*  
01:50:14 22 or *Specht v. Patterson*. And many lawyers, however, over  
01:50:20 23 the years have failed to enforce *Specht v. Patterson*.  
01:50:22 24 They always accidentally argue in court consenting -- or  
01:50:27 25 basically agreeing that civil commitment is legal

01:50:31 1 instead of criminal.

01:50:32 2 The next case here is *Stanley v. Georgia* --  
01:50:37 3 oh, yeah. *Humphrey versus Cady* also says I have the  
01:50:41 4 right to effective assistance of counsel. And it  
01:50:44 5 creates a procedural default exception if my lawyer  
01:50:48 6 doesn't raise this in his -- in the main civil --  
01:50:53 7 criminal case. I can bring it up in a habeas arguing  
01:50:57 8 ineffective assistance of counsel.

01:50:59 9 The next case is *Stanley v. Georgia*. They  
01:51:02 10 state that there is no prevention of crimes by citizens  
01:51:07 11 such as by banning the tools of crimes.

01:51:13 12 Okay. Now here are two brand new Supreme  
01:51:16 13 Court cases that verify you have no jurisdiction and  
01:51:18 14 that civil commitment doesn't exist. Okay. *United*  
01:51:28 15 *States v. Haymond*, H-a-y-m-o-n-d. The Supreme Court  
01:51:31 16 voted that liberty can only be taken by a jury with  
01:51:37 17 "beyond a reasonable doubt" proof. And Justice  
01:51:41 18 Roberts -- what they were trying to decide in this case,  
01:51:44 19 there has been a battle over whether the state could  
01:51:47 20 really issue things like financial penalties and  
01:51:53 21 different things and call them civil. And in this case  
01:51:57 22 they addressed whether a judge had the ability to revoke  
01:52:02 23 a supervised release of a sexual offender and issue a  
01:52:06 24 prison sentence because he was found with child porn.  
01:52:10 25 And they said: No, judges can't decide guilt whatsoever

01:52:14 1 or skip liberty, only juries can. Now, that's why  
01:52:20 2 civil commitment is done in the United States.

01:52:23 3 Now, the next case on this is *Kokesh v. SEC*.  
01:52:34 4 This case decided that anything done to prevent crimes  
01:52:38 5 by individuals is, in fact, a bill of attainder or  
01:52:44 6 punishment. And they said: What's the difference  
01:52:46 7 between civil and criminal in this case? They said  
01:52:49 8 civil is for injuries between private parties, and  
01:52:54 9 criminal is for when the government wishes to punish or  
01:53:03 10 penalize a person. So basically they define civil  
01:53:06 11 commitment as criminal according to *Kokesh v. SEC*  
01:53:09 12 because it seeks to forestall danger to the community.  
01:53:14 13 And this has just been, like, two years ago that they  
01:53:16 14 ruled that.

01:53:18 15 Okay. Now, the final piece to this is:  
01:53:21 16 What does the common law of England require? So due  
01:53:26 17 process by definition is whatever -- you first look at  
01:53:31 18 what the U.S. Constitution requires, and then if it  
01:53:35 19 doesn't have anything, you then look to the common law  
01:53:38 20 of England to decide what due process is.

01:53:42 21 THE COURT: Okay. Thank you very much, Mr.  
01:53:45 22 Giffen.

01:53:45 23 THE RESPONDENT: Okay. The common law of  
01:53:49 24 England requires a jury trial to decide if a person is  
01:53:55 25 mentally ill or insane. And I have a white paper on it

01:53:58 1 on my website. I am supposed to receive a jury trial  
01:54:00 2 today.

01:54:00 3 And the other thing, I need this motion -- I  
01:54:05 4 need you to order my lawyer to file it because I can't  
01:54:08 5 mail it to you, and I need to file both a habeas corpus,  
01:54:13 6 a 2241, and I need you to get a copy of it as well.

01:54:17 7 THE COURT: Okay. Well, I have heard you  
01:54:20 8 today, sir, and I have made my decision.

01:54:29 9 And I thank you all. We stand adjourned.

10 (Concluded at 11:55 a.m.)

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13 **C E R T I F I C A T E**

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15 I certify that the foregoing is a correct transcript  
16 from the record of proceedings in the above-entitled  
17 matter.

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19 /s/ Tracy L. McGurk\_\_\_\_\_

\_\_\_\_7/10/2023\_\_\_\_

20 Tracy L. McGurk, RMR, CRR

Date

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